



IEE AMENDMENT

PROJECT/ACTIVITY DATA

Project/Activity Name:	Environment Program
Geographic Location(s) (Country/Region):	Colombia
Amendment (Yes/No), if Yes indicate # (1, 2...):	Yes, amendment # 5
Implementation Start/End Dates (FY or M/D/Y):	FY 2014 / FY 2020
If Amended, specify New End Date:	NA
Solicitation/Contract/Award Number:	Various contracts and cooperative agreements related to the environment program under the DO4
Implementing Partner(s):	Various implementing partners related to the environment program under the DO4
Bureau Tracking ID:	LAC-IEE-18-18
Tracking ID of Related RCE/IEE:	LAC-IEE-15-31
Tracking ID of Other, Related Analyses:	LAC-IEE-15-02/LAC-IEE-14-02/LAC-IEE-11-37

ORGANIZATIONAL/ADMINISTRATIVE DATA

Implementing Operating Unit(s): (e.g. Mission or Bureau or Office)	USAID/Colombia/Office of Environment
Other Affected Operating Unit(s):	NA
Lead BEO Bureau:	Diana Shannon
Funding Operating Unit(s): (e.g. Mission or Bureau or Office)	USAID/Colombia/Office of Environment
Funding Account(s) (if available):	Biodiversity/Sustainable Landscapes/Climate Change
Original Funding Amount:	\$175 million
If Amended, specify funding amount:	NA
If Amended, specify new funding total:	NA
Prepared by:	María Elena Santana
Date Prepared:	December 19, 2017

ENVIRONMENTAL COMPLIANCE REVIEW DATA

Analysis Type:	Initial Environmental Examination Amendment	
Environmental Determination(s):	Categorical Exclusion	
	Negative Determination	
	Positive Determination	
RCE/IEE Expiration Date (if different from implementation end date):	NA	
Additional Analyses/Reporting Required:	NA	
Climate Risks Identified (#):	Low risk	
Climate Risks Addressed (#):	Low risk	

THRESHOLD DETERMINATION AND SUMMARY OF FINDINGS

PROJECT/ACTIVITY SUMMARY

The purpose of this amendment is to request approval to change the Negative Determination with Conditions to a Categorical Exclusion in support of Development Credit Authority (DCA) activities under USAID/Colombia's Environment Program.

No changes are being made to activities.

ENVIRONMENTAL DETERMINATIONS

Refer to Section 4.0 of the IEE for the Threshold Determinations, as amended.

BEO COMMENTS AND SPECIFIED CONDITIONS OF APPROVAL

As LAC BEO, I am concurring with this IEE amendment to change the Threshold Determination for the Colombia Environment Program DCA loan portfolio guarantee (LPG) activities to categorical exclusion (22 CFR 216.2(c)(2)(x)) because this is what is stated in ADS 249.3.4.2.

I reviewed the conditions of this IEE amendment and the DCA agreement requirements, including the qualifying loan criteria, determinations regarding qualifying loans, procedures for removing loans from coverage, and submission of policies and procedures that assure projects are environmentally sound and in compliance. I concur with the Mission that these are sufficient conditions and controls to avoid and/or mitigate significant adverse impacts.

However, I disagree with this Threshold Determination as categorical exclusion paragraph (x) does not apply to this DCA activity because its objective is not to capitalize the credit institution. Also the DCA agreement and this IEE amendment mandate that environmental conditions be applied, which is not consistent with the application of categorical exclusions. Further the notwithstanding language of 216.2(c)(3) may apply because USAID asserts 'control' through the conditions of the agreement, as noted above, and by way of this IEE amendment. The Mission has determined that 'control' is required to ensure that the guaranteed loans don't have significant adverse environmental impacts. It becomes a circular argument that controls are necessary to prevent adverse impacts, therefore, the categorical exclusion doesn't apply. In addition, USAID retains the right to review and remove individual loans through conditions in the agreement, which is not consistent with objectives set out in 216.2(c)(1) for categorical exclusions.

My concurrence as BEO is given with the understanding that, regardless of the application of a categorical exclusion, the Mission will ensure that the conditions of this IEE amendment, the DCA agreement, and other relevant requirements are fully implemented and that this DCA activity doesn't result in significant adverse environmental impacts.

IMPLEMENTATION

In accordance with 22CFR216 and Agency policy, the conditions and requirements of this document become mandatory upon approval. Further the conditions and requirements of the original IEE and the other amendments remain in full effect, except as amended by this document.

USAID APPROVAL OF AMENDMENT TO IEE

PROJECT/ACTIVITY NAME: Environment ProgramBureau Tracking ID: LAC-IEE-17-XX

Approval:


 Lawrence J. Sachs, Mission Director

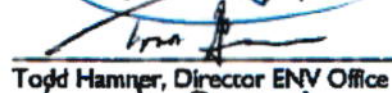
1/30/18
 Date

Clearance:


 Aman S. Djahanbani, Deputy Mission Director

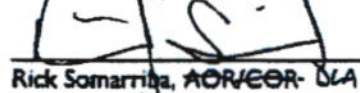
01/22/2018
 Date

Clearance:


 Todd Hamner, Director ENV Office

01/16/18
 Date

Clearance:


 Rick Somarriva, AOR/ECR- SLA

1/12/18
 Date

Clearance:


 Maria Elena Santana, Mission Environmental Officer

01/09/18
 Date

Clearance:


 Paul Schmiedke, Regional Environmental Advisor

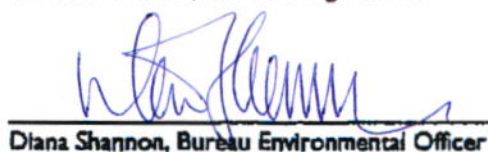
1-8-18
 Date

Clearance:


 Rebecca Hammel, Resident Legal Officer

1-19-18
 Date

Concurrence:


 Diana Shannon, Bureau Environmental Officer

March 14, 2018
 Date

1.0 PURPOSE AND SCOPE

The purpose of this amendment is to request approval to change the Negative Determination with Conditions to a Categorical Exclusion in support of Development Credit Authority (DCA) activities under USAID/Colombia's Environment Program. New information emerged about the rigorous requirements already in place in the Colombian legal framework for financial institutions that we were not aware of before. After further review, the conditions are no longer necessary or appropriate for this DCA activity. Under 22 CFR 216.2(c)(2)(x), a categorical exclusion is available for "support for intermediate credit institutions when the objective is to assist in the capitalization of the institution or part thereof and when such support does not involve reservation of the right to review and approve individual loans made by the institution".

This amendment is identified as number 5 and includes the Initial Environmental Examination LAC-IEE-15-31, LAC-IEE-15-02, LAC-IEE-14-02 and LAC-IEE-11-37 which were prepared in accordance with USAID Environmental Procedures 216, ADS Chapter 204 Environmental Procedures and MO# 2011-02 Environmental Procedures, for the Environment Program, under the Development Objective No. 4 "Environmental resiliency and low-emissions development strengthened" of USAID/Colombia.

It is important to clarify that no new activities are being added in this amendment.

2.0 CERTIFICATION OF COMPLIANCE

- All other aspects of the Environment Program and geographic scope remain unchanged from previous environmental analyses.
- Annual Work Plan(s) has/have been verified to undertake only those activities originally proposed, and all reporting requirements have been adhered to and remain unchanged. This program is in compliance.
- There has been no change to the climate risk screening/management of the project in accordance with [Mandatory Reference for ADS Chapter 201 on Climate Risk Management for USAID Projects and Activities](#).
- The other conditions and requirements of earlier IEEs remain in full force.
- The requirements of this amendment become effective upon signing.

3.0 REVISIONS

According to 22 CFR 216.2(c)(2)(x), for DCA activities, there is a need to change the determination of the environmental impacts to a Categorical Exclusion. As per USAID/Colombia Mission policy, in order to have consistent treatment, all existing Loan Portfolio Guarantee DCAs using the standard DCA agreement template will receive a Categorical Exclusion in accordance with 22 CFR 216 and ADS 249.3.4.2. The signed action memo is included in the attachments.

DCA activities must adhere to Colombian law, USAID/Colombia policy, and procedures and provisions for DCAs as per the loan agreement. Safeguards include:

- Financial institutions' environmental procedures are evaluated as part of the risk assessment conducted by the DCA office.

- The standard DCA includes language at Section 7.01(ii)(b) (b) requiring the Guaranteed Party to submit, as a condition precedent to the effectiveness of the DCA: “A description of the Guaranteed Party’s policies and procedures to assure that projects financed by the Guaranteed Party are environmentally sound and comply with Applicable Law and any USAID specific requirements”.
- Section 2.02(b) of the standard DCA agreement includes a requirement that certain categories of activities, including the use of pesticides and activities that are considered to have a significant effect on the environment under 22 CFR 216.2(d), cannot proceed without prior approval from USAID. Section 2.02(b) of the proposed DCA further states that any approval: “will be contingent upon the submission by the Guaranteed Party of evidence sufficient to demonstrate compliance with local environmental laws and to enable USAID to make an assessment of the environmental impact of such activities”. Before USAID approves any activity that may have a significant effect on the environment, this IEE will be amended to ensure that all necessary conditions and protections are in place.
- Any potential environmental impact is reviewed during the implementation of the DCA as part of regular monitoring and oversight. If a loan is found to have not complied with the requirements and conditions of the guarantee, USAID will remove the loan from guarantee coverage.
- The Government of Colombia imposes strict environmental licensing requirements on projects that substantially impact the environment. The Ministry of Environment reviews projects and awards environmental licenses to approved projects (licencia ambiental). Financial institutions must verify that proposed projects have the proper licensing, the “licencia ambiental”, prior to approving financing. It is illegal for financial institutions to provide financing to projects that are not properly licensed. Further, the Superintendencia Financiera de Colombia, the banking system regulator, requires that banks maintain internal control systems over risk management and lending activities. Independent auditors evaluate banks’ internal control systems annually, which ensure that banks are complying with internal control requirements.
- As needed, USAID/Colombia may provide training to partner institution’s staff on environmental management and on loan selection criteria. DCA activities are subject to periodic monitoring by the COR/AOR and/or MEO to assure that there is no significant environmental impact and to make sure that the bank understands the environmental criteria in the loan agreement. COR/AOR is responsible for making sure that the DCA activities are implemented in an environmentally sound manner (ADS 204.3.4).

Per ADS 204, it is the responsibility of the USAID A/COR to keep the MEO/REA and BEO informed of any new information or changes in the activity that might require revision of this amendment and environmental determination.

No additional conditions of approval are required.

4.0 SUMMARY OF ENVIRONMENTAL DETERMINATION

As this amendment is identified as number 5, it includes the Initial Environmental Examination LAC-IEE-15-31, LAC-IEE-15-02, LAC-IEE-14-02 and LAC-IEE-11-37 which were prepared in accordance with USAID Environmental Procedures 216, ADS Chapter 204 Environmental Procedures and MO# 2011-02 Environmental Procedures, for the Environment Program, under the Development Objective No. 4 “Environmental resiliency and low-emissions development strengthened” of USAID/Colombia.

The narrative below consolidates all the changes to date and highlights amendment # 5:

A **Categorical Exclusion** is issued to the following activities of the Environment Program:

- (a) Capacity building activities to support policy work, institutional reform;
- (b) Management plan preparation for protected areas;
- (c) Development of conservation standards;
- (d) GHG monitoring and analysis systems;
- (e) REDD+ capacity development;
- (f) Biodiversity, forest and carbon inventories;
- (g) Support to the preparation of assessments, inventories and standards, including energy related assessments;
- (h) Support to institutional reform processes;
- (i) Capacity development for the strengthening of community organizations part of the biodiversity, REDD+ or energy programs;
- (j) Development Credit Authority (DCA) activities to support micro-, small- and medium-size enterprises to increase the access to finance to develop sustainable productive practices and businesses, such as agroforestry and silvopastoral systems. Targeted populations include rural agriculture and agroforestry producers, victims of the conflict, displaced populations, Afro Colombians, indigenous groups, and women, among others. The geographic scope will be defined based on the USAID/Colombia Environment Program portfolio.

Pursuant to 22 CFR 216.2 (c) (2) these activities qualify for a categorical exclusion as:

- (i) Education, technical assistance, or training programs except to the extent such training programs include activities directly affecting the environment (such as construction of facilities, etc.);
- (ii) Controlled experimentation exclusively for the purpose of research and field education which are confined to small areas and carefully monitored.
- (iii) Analyses, studies, academic or research workshops and meetings;
- (x) Support for intermediate credit institutions when the objective is to assist in the capitalization of the institution or part thereof and when such support does not involve reservation of the right to review and approve individual loans made by the institution. Additionally, ADS 249.3.4.2 specifies: “loan portfolio guarantees made by USAID without the right to approve individual loans qualify for the categorical exclusion set forth in 22 CFR 216.2(c)(2)(x) and consequently are not subject to the general procedures contained in 22 CFR 216.3 unless an individual loan guarantee is determined by GC to be subject to the control of USAID and “have a significant effect on the environment” as described in 22 CFR 216.2(c)(3). USAID does not have the right to approve individual loans in the proposed DCA

loan portfolio guarantees. Additionally, as described below, the DCA agreements will require prior approval from USAID for any activities that might have a significant effect on the environment. The Mission Environmental Officer (MEO) and the Contracting Officer's Representative -COR/ Agreement Officer's Representative AOR will oversee the implementation of appropriate environmental guidelines. Reports on these matters will be submitted by the Mission to LAC/BEO in Washington periodically.

- (xiv) Studies, projects or programs intended to develop the capability of recipient countries to engage in development planning;

A Negative Determination with conditions is issued for:

- (a) All 'on-the ground' REDD+ related activities (including capacity building and technical assistance) that would lead to an impact on the management of natural resources and activities involving assistance with implementation of priority actions identified in land use strategies that affect forests, for example, by addressing the most influential drivers of deforestation and forest degradation, or restoring degraded lands through enhanced tree cover.
- (b) Activities related to technical assistance to producing or processing crops and for small productive infrastructure. The Mission Environmental Officer (MEO) and the Contracting Officer's Representative -COR/ Agreement Officer's Representative AOR will oversee the implementation of appropriate environmental guidelines. Reports on these matters will be submitted by the Mission to LAC/BEO in Washington periodically.
- (c) Activities related to the production or processing of fruits/vegetables such as rice, banana, cocoa; forestry and agroforestry, and livestock products(that will be selected after completion of the agro-ecological assessment currently being conducted in consultation with beneficiary communities). This includes any small productive infrastructure.
- (d) The use of pesticides in the agricultural production, being the condition the full use and application of the approved Pesticide Evaluation Report and Safe Use Action Plan (PERSUAP). Any modification of the PERSUAP will have to be approved before the implementation of the program. The MEO and the COTR/AOTR will oversee the implementation of the PERSUAP. Reports on these matters will be submitted by the Mission to LAC/BEO periodically.
- (e) Activities needing small scale infrastructure for climate change adaptation and small scale construction for clean energy. The condition is that the relevant USAID Environmental Guidelines for Development <http://www.usaidgems.org/sectorGuidelines.htm> (which replace the Environmental Guidelines for Development Activities in Latin America and Caribbean) will be used in the implementation of these activities. The MEO, CTO/AOTR, and implementing partners will oversee the use of these guidelines and their implementation. Reports on these matters will be submitted yearly to the BEO. Small scale infrastructure should be discussed with MEO prior to beginning the activity to determine if an activity may use the ER process or require the preparation of an EA. Environmental considerations, including monitoring and training, will be included in contractual documents related to the above components of AOI.

A Positive Determination is issued for:

- (a) Infrastructure or activities that may cause significant environmental impacts. The Mission will take special care to follow ER procedures established in the Programmatic Environmental Assessment (PEA) approved. Based on these procedures, the MEO will determine which activities/projects may use the ER process and which activities will require the preparation of an EIA. Environmental considerations, including monitoring and training, will be included in contractual documents. Activities not covered under this PEA will require an Environmental Assessment for which the scope of work must be approved by BEO.
- (b) Reduction of mercury use by small informal mining units and work on recovering degraded areas by unauthorized mining activities.
- (c) Large-scale infrastructure activities (e.g., any building over 1,000 m²), irrigation systems over 100 ha, forestry, mining, or other activities that may cause significant adverse environmental impacts. For ongoing activities only, the Mission will follow the environmental review procedures established in the Programmatic Environmental Assessment PEA approved by LAC/BEO on April 28, 2003. Any new Environment Program activities will be covered by the mission-wide Programmatic Environmental Assessment (PEA) currently being developed for USAID/Colombia's portfolio, which will specifically include the proposed Environmental Program and any potential direct, indirect, and cumulative environmental impacts. The MEO will determine which activities/projects may use the environmental review process established under the PEA and which activities will require the preparation of site-specific or an activity-specific Environmental Assessments. Environmental considerations, including monitoring and training, will be included in all contractual documents and awards.

Additional Responsibilities and Conditions:

- New activities eventually implemented under this PAD will be subjected to Initial Environmental Examinations (IEE) and Environmental Threshold Decisions (ETD) prior to obligation, according to ADS 201, ADS 204 and 22 CFR 216.
- Each activity manager or Contracting (or Agreement) Officer Representative (COR or AOR) is responsible for making sure environmental conditions are met (ADS 204.3.4). In addition, CORs/AORs are responsible for ensuring that appropriate environmental guidelines are followed, mitigation measures in the IEE are funded and implemented, and that adequate monitoring and evaluation protocols are in place to ensure implementation of mitigation measures.
- To ensure compliance with the USAID environmental regulation 22 CFR 216, the Implementing Partner (IP) is responsible for using the *Monitor* system as instructed by the Mission Environment Officer. The IP shall ensure that appropriate environmental guidelines are followed and that mitigation measures described in the pertinent

Threshold Decision for each of these activities are funded and implemented, including any necessary training or capacity building, and adequate monitoring. The IP will have the environmental expertise on staff to be able to perform environmental compliance functions.

- Applicable best management practices can be found in the Environmental Guidelines for Development Activities <http://www.usaidgems.org/sectorGuidelines.htm> (which replace the Environmental Guidelines for Development Activities in Latin America and Caribbean).
- An amendment of this IEE is required for any activity resulting in policy changes that have the potential to affect negatively the environment, large scale irrigation and other activities not yet designed and therefore not described in this document. Any use, or training for the use, of pesticides in other projects listed in this IEE would require a PERSUAP and IEE amendment.
- The MEO, and/or his designee, reserves the right to conduct spot monitoring checks for all of the activities listed in this IEE to ensure that the conditions listed in the IEE, ETD, and subsequent environmental management plans from Monitor are being followed.
- The implementing contractor or partner will ensure that all activities conducted under this instrument comply with all relevant ETDs. Also, through its regular performance monitoring and reporting requirements, a section on environmental compliance (e.g. mitigation monitoring results) will be included.
- Language from “Environmental Compliance: Language for Use in Solicitations and Awards An Additional Help for ADS Chapter 204” must be included, as appropriate, in award documents (see: <http://www.usaid.gov/policy/ads/200/204sac.pdf>). It is the responsibility of the Assistance Objective (AO) Team and/or Contracts/Agreements Officer to ensure that environmental compliance language from the ETD is added to procurement and obligating documents.

5.0 LIMITATIONS OF THIS INITIAL ENVIRONMENTAL EXAMINATION AMEUREMENT

The determinations recommended in this document apply only to projects/activities and sub-activities described herein. Other projects/activities that may arise must be documented in either a separate IEE, an IEE amendment if the activities are within the same project/activity, or other type of environmental compliance document and shall be subject to an environmental analysis within the appropriate documents listed above.

Other than projects/activities determined to have a Positive Threshold Determination, it is confirmed that the projects/activities described herein do not involve actions normally having a significant effect on the environment, including those described in 22CFR216.2(d).

In addition, other than projects/activities determined to have a Positive Threshold Determination and/or a pesticide management plan (PERSUAP), it is confirmed that the projects/activities described herein do not involve any actions listed below. Any of the following actions would require additional environmental analyses and environmental determinations:

- Support project preparation, project feasibility studies, or engineering design for activities listed in §216.2(d)(1);
- Affect endangered and threatened species or their critical habitats per §216.5, FAA 118, FAA 119;
- Provide support to extractive industries (e.g. mining and quarrying) per FAA 117;
- Promote timber harvesting per FAA 117 and 118;
- Lead to new construction, reconstruction, rehabilitation, or renovation work per §216.2(b)(1);
- Support agro-processing or industrial enterprises per §216.1(b)(4);
- Provide support for regulatory permitting per §216.1(b)(2);
- Lead to privatization of industrial facilities or infrastructure with heavily polluted property per §216.1(b)(4);
- Procure or use genetically engineered organisms per §216.1(b)(1); and/or
- Assist the procurement (including payment in kind, donations, guarantees of credit) or use (including handling, transport, fuel for transport, storage, mixing, loading, application, clean-up of spray equipment, and disposal) of pesticides or activities involving procurement, transport, use, storage, or disposal of toxic materials. Pesticides cover all insecticides, fungicides, rodenticides, etc. covered under the Federal Insecticide, Fungicide, and Rodenticide Act per §216.2(e) and §216.3(b).

6.0 REVISIONS

Per 22CFR216.3(a)(9), when ongoing programs are revised to incorporate a change in scope or nature, a determination will be made as to whether such change may have an environmental impact not previously assessed. If so, this IEE will be amended to cover the changes. Per ADS 204, it is the responsibility of the USAID A/COR to keep the MEO/REA and BEO informed of any new information or changes in the activity that might require revision of this environmental analysis and environmental determination.

ATTACHMENTS:

1. USAID/Colombia Mission policy (signed action memo).
2. DCA Template Agreement.



DECISION MEMO

November 14, 2017

TO: Lawrence J. Sacks, Mission Director

THRU: Aman S. Djahanbani, Deputy Mission Director

FROM: Rebecca Hammel, Resident Legal Officer *RAH*
Emily Waytoti, Alternate Mission Environmental Officer *EW*

SUBJECT: Application of 22 CFR 216 to existing USAID/Colombia Loan Portfolio Guarantees (LPGs) under the Development Credit Authority (DCA) that use the standard LPG DCA template

Decision Requested:

That you determine that the Mission's existing LPG DCAs agreements that include the standard DCA agreement template will receive:

- A categorical exclusion from the requirement to prepare an Initial Environmental Examination, Environmental Assessment, or Environmental Impact Statement, processed through a Request for Categorical Exclusion; or
- A Negative Determination with Conditions determination, requiring adherence to the environmental compliance procedures of 216.3, usually processed through an Initial Environmental Examination.

Background:

The DCA is a tool that allows USAID to guarantee debt if that debt meets certain criteria. DCA transactions typically have one or more Guaranteed Parties (GPs) which serve as the lender in the transaction. That GP lends their own funds to one or more borrowers. USAID's funds never go directly to a borrower. If the borrower fails to pay their debt, the GP may make a claim against USAID for a portion of the losses they suffered in a "Qualifying Loan" (*i.e.*, a loan that meets all of the DCA legal agreement's criteria). Accordingly, USAID may make payments to the GP if there is a default, but USAID will never make direct payments to the borrower. Furthermore, before USAID makes a claim payment, USAID reviews the associated loan solely to ensure compliance with the terms and conditions of the DCA legal Agreement. USAID also monitors the Guaranteed Party's use of the guarantee in general to ensure that loans are appropriately placed under coverage. If the Guaranteed Party's compliance certification of a loan placed under coverage is determined by USAID to be incorrect (*e.g.*, the loan was used to finance certain activities prohibited by the DCA legal agreement), such loan shall no longer be

covered by USAID as a Qualifying Loan.

As with all USAID activities, DCAs are subject to the environmental requirements at 22 CFR 216.¹ Currently, the Mission is implementing or planning to implement DCAs in three Development Objectives (DOs): Rural and Economic Development (RED), Environment (ENV) and Reconciliation and Inclusion (RIO). The Initial Environmental Examinations (IEEs) covering these DOs, all of which support similar activities, have resulted in three different determinations for our DCAs: positive determination requiring a full Environmental Assessment, negative determination with conditions, and categorical exclusion. The most recent DCA IEE completed (RIO) received a categorical exclusion. The purpose of this memo is to amend existing IEEs in order to establish a consistent interpretation of the regulations for the Mission's LPG DCAs supporting similar activities.

All USAID/Colombia DCA transactions to date are Loan Portfolio Guarantees (LPGs) where USAID does not have knowledge or control over the Qualifying Loans prior to the approval of financing, and does not have the right to review or approve individual loans. The LPGs all have similar objectives to support small and medium enterprises, including but not limited to agriculture, to increase their working capital. The average loan amount is \$1,200. USAID/Colombia's DCAs are complemented by contracts that provide technical assistance to the loan recipients and to the banks. As part of USAID's risk assessment process, which is done before a DCA legal agreement is completed, USAID staff review the lender's environmental policies and procedures.

The standard DCA legal template contains provisions that protect against any Qualifying Loan being used to finance the purchase of pesticides or any activities that are likely to have a significant adverse impact on the environment. Section 7.01(ii)(b) requires the Guaranteed Party to submit, as a condition precedent to the effectiveness of the DCA: "A description of the Guaranteed Party's policies and procedures to assure that projects financed by the Guaranteed Party are environmentally sound and comply with Applicable Law and any USAID specific requirements." USAID does not retain approval rights over these policies and procedures, but we can and do provide comments and those comments are typically taken seriously by the Guaranteed Party.

In addition, section 2.02(b) of the standard DCA agreement includes a requirement that certain categories of activities, including the use of pesticides and activities that are considered to have a significant effect on the environment per 22 CFR 216.2(d), cannot proceed without prior

¹ 22 CFR 216 was independently developed as a result of a litigation settlement, and while it follows the spirit of the National Environmental Protection Act (NEPA), 22 CFR 216 was not issued under or subject to the legal requirements of NEPA, which does not apply to USAID activities overseas.

approval from USAID. Specifically, the section 2.02(b) of the standard DCA template states that the Qualifying Loan must not be used to finance any of the following without the prior written approval of USAID:

- “(1) Pesticides;
- (2) Logging equipment;
- (3) Activities which would result in the loss of forest lands due to livestock rearing, road construction or maintenance, colonization of forest lands or construction of dams or other water control structures;
- (4) Activities which are likely to have a significant adverse effect² on the environment, including any of the following (to the extent such activities are likely to have a significant adverse impact on the environment):
 - (a) programs of river basin development,
 - (b) irrigation or water management projects (including dams and impoundments),
 - (c) agricultural land leveling,
 - (d) drainage projects,
 - (e) large scale agricultural mechanization,
 - (f) new lands development,
 - (g) resettlement projects,
 - (h) penetration road building or road improvement projects,
 - (i) power plants,
 - (j) industrial plants, or
 - (k) potable water and sewerage projects other than those that are small-scale.”

The discussion below applies exclusively to LPG DCAs that use the above language regarding environmental protections in the LPG DCA template, and where USAID does not provide approval for the use of pesticides or any other activities that are likely to have a significant adverse impact on the environment.

The environmental regulations include the following categorical exclusion at 22 CFR 216.2(c)(2)(x): “Support for intermediate credit institutions when the objective is to assist in the capitalization of the institution or part thereof and when such support does not involve reservation of the right to review and approve individual loans made by the institution.” USAID internal policy at 249.3.4.2 (Pre-Obligation Requirements) further states: “Pre-Obligation requirements that apply to other USAID acquisition and assistance instruments apply to DCA as well, including Environmental Procedures (See ADS 204, Environmental Procedures and 22

² This language in the standard DCA template is copied verbatim from 22 CFR 216.2(d) Classes of Actions Normally Having a Significant Effect on the Environment.

CFR 216). However, loan portfolio guarantees made by USAID without the right to approve individual loans qualify for the categorical exclusion set forth in 22 CFR 216.2(c)(2)(x) and consequently are not subject to the general procedures contained in 22 CFR 216.3 unless an individual loan guarantee is determined by GC to be subject to the control of USAID and ‘have a significant effect on the environment’ as described in 22 CFR 216.2(c)(3).” 22 CFR 216.2(c)(3) states that the procedures in 22 CFR 216.3 (for the Initial Environmental Examination, Environmental Assessment, and Environmental Impact Statement) will apply even to categorical exclusions, if “the project, program, or activity, or aspect or component thereof, is subject to the control of USAID and may have a significant effect on the environment.” 22 CFR 216.1(c)(11) defines significant effect as an action that “does significant harm to the environment.”

The Government of Colombia imposes strict environmental licensing requirements on projects that substantially impact the environment. The Ministry of Environment reviews projects and awards environmental licenses to approved projects (*licencia ambiental*). Banks must verify that proposed projects have the proper licensing, the “*licencia ambiental*,” prior to approving financing. It is illegal for banks to provide financing to projects that are not properly licensed. Further, the Superintendencia Financiera de Colombia, the banking system regulator, requires that banks maintain internal control systems over risk management and lending activities. Independent auditors evaluate the internal control systems of Guaranteed Parties annually, thereby ensuring that banks are complying with internal control requirements.

Discussion:

Resident Legal Officer Analysis and Recommendation:

22 CFR 216.2(c)(1)(ii) states that one of the criteria applied to the list of categorical exclusions is that “A.I.D. does not have *knowledge of or control* over, and the objective of A.I.D. in furnishing assistance does not require, either prior to approval of financing or prior to implementation of specific activities, knowledge of or control over, the details of the specific activities that have an effect on the physical and natural environment for which financing is provided by A.I.D.” (*emphasis added*) For LPGs, USAID does not have knowledge or control over loans prior to the approval of financing.

In addition, as noted above, the regulations include the following categorical exclusion at 22 CFR 216.2(c)(2)(x): “Support for intermediate credit institutions when the objective is to assist in the capitalization of the institution or part thereof and when such support does not involve reservation of the right to review and approve individual loans made by the institution.” LPGs, using the standard DCA LPG template, are support for credit institutions where the terms and conditions of the agreement do not include the right to review and approve individual loans. 22 CFR 216.2(c)(3) and the corresponding USAID internal policy at ADS 249.3.4.2 address the

issues of control (whether the activity is subject to the control of USAID) and content (whether the activity may have a significant effect on the environment). USAID/Colombia's LPGs are not subject to the control of USAID, since USAID does not have knowledge or control over, nor has the right to review and approve, individual loans. Due to the standard language in the DCA template, which prohibits the financing of pesticides and activities that normally have a significant effect on the environment, the nature of the activity (support for SMEs), the \$1,200 average loan size, the technical assistance provided to banks and loan beneficiaries through complementary contracting mechanisms, and the Colombian environmental regulations applicable to financial institutions, the Resident Legal Officer has not determined that USAID/Colombia's LPGs have a significant effect on the environment.

The RLO finds that under 22 CFR 216, and the accompanying USAID internal policy on the interpretation of this regulation, all existing USAID/Colombia LPG DCAs using the standard template are eligible for a categorical exclusion under 22 CFR 216.2(c)(2)(x). Any decision to impose a negative determination with conditions for USAID/Colombia LPG DCAs would be made as a matter of policy, not law, as it goes beyond what the regulations require. Additionally, a categorical exclusion would not prohibit or impede in any way the ability of USAID to implement risk mitigation measures where appropriate.

Mission Environmental Officer and Regional Environmental Advisor Analysis and Recommendation:

The National Environmental Policy Act (NEPA) requires that all US government agencies adhere to the policy that any federal action must be analyzed to determine if it will have negative environmental consequences, is if so, those consequences must be disclosed to the public and mitigated to the extent possible (<https://www.epa.gov/nepa/what-national-environmental-policy-act>). Each agency has developed its own set of policies and regulations designed to ensure compliance with NEPA, and the vast majority of these contain certain categorical exclusions for activities that "normally" do not have an impact on the environment.

22 CFR 216, USAID's regulation under NEPA, also allows for certain categories of activities to be excluded from detailed analysis because they "generally" (See 22 CFR 216 .2 (c)(1)) do not have a negative impact on the environment. 22 CFR 216 .2 (c)(1)(i) makes it clear that the Categorical Exclusions are applicable when "the action does not have an effect on the natural or physical environment" which is "generally" the case. This language indicates that each activity, including those listed in the fifteen categories under 22 CFR 216 .2 (c)(2), while "generally" not having a negative impact on the natural and physical environment must still undergo some level of analysis to validate that these assumptions are true. In the cases where they are, a Request for Categorical Exclusion is warranted. In those cases where it is not, an Initial Environmental Examination should be prepared.

In the case of every one of the fifteen excluded categories, one can find exceptions where due to the potential for negative environmental impacts, a Request for Categorical Exclusion is not warranted as per 22 CFR 216.2(c)(1)(i). For example, Cat Ex. (ii) is listed because controlled experiments “generally” do not have an impact on the environment. However, there may be times when these experiments do have risks and therefore, require a certain level of environmental analysis; first to determine the size and scale of the experiment and second to assure “control.” Field trials of genetically modified organisms or experimental pesticides for example may warrant further analysis and in the spirit of NEPA, USAID should conduct an IEE. The same principle applies to all fifteen categories, including (x); the one used to exclude DCAs from additional analysis. Generally speaking, LPGs under DCA may not have negative impacts on the environment and USAID may not have direct control of the GPs decisions, but the activities catalyzed by the mere existence of the program may create negative impacts. For example, if USAID is encouraging small business development loans, the GP may lend money to a group of cooperatives who open a series of leather tanning businesses. Arsenic is a common chemical used in tanning and I believe it goes without saying that the use, storage, and disposal of arsenic could have potential environmental impacts. Does USAID simply ignore this even though the activity was catalyzed through our LPG? Or would the agency and the beneficiaries be better served by issuing a Negative Determination with Conditions that allows USAID and the GP to identify and mitigate potential impacts. Furthermore, what would the Washington Post have to say about people dropping dead from arsenic poisoning through a USAID sponsored activity? A response by USAID that, “well....this is categorically excluded and therefore we didn’t need to do any analysis” would simply not be acceptable!

These two examples, along with the ambiguity of the word “generally” lead the compliance community to conclude that if the agency is to redeem its legal responsibilities under NEPA, and its ethical responsibilities to the beneficiaries ALL proposed actions should receive some level of analysis; and that in cases where appropriate and necessary, even those that “generally” fall within the fifteen excluded categories be subject to the full IEE process. This approach ensures that the US government does not cause a negative impact to the environment and if so, that it is disclosed and mitigated to the extent possible.

In the specific case of the USAID/Colombia DCAs in question, they may support asset classes, such as agriculture, which could result in environmental impacts. This asset class has corresponding mitigation measures that are applicable and merited, irrespective of approval of individual loans. The MEO and RA recommendation is that DCAs with assets classes that could result in environmental impacts (such as forestry, agriculture, small scale construction) be reviewed and where appropriate conditions included through a Negative Determination with Conditions threshold determination.

LAC Bureau Environmental Officer Analysis and Recommendation:

Discussion of the appropriate Threshold Determination for LPGs has been ongoing in several missions and in USAID/DC for some time. Mostly recently discussions were held this past summer which included Victor Bullen, the Agency Environmental Coordinator, and Teresa Bernhard, the E3 Bureau Environmental Officer, the DCA Office, and GC. To date, agreement has not been reached on whether a Categorical Exclusion or a Negative Determination with Conditions Threshold Decision is appropriate for LPGs. However, it seems all parties agree that controls, including environmental requirements, should be placed in LPGs agreements, including prohibiting the financing of pesticides and other activities likely to have significant adverse impacts and requiring that the loaning institution submits its environmental policies and procedures to USAID. Loan agreements also have other controls such as fiduciary requirements. In addition, some Missions provide that USAID may review individual loans and that USAID will provide any needed technical assistance and training relating to environmental requirements to the loaning institution.

Much of the discussion over the appropriate Threshold Decision centers on USAID's control over the credit institution, specifically as it relates to the Categorical Exclusion relating to intermediate credit institutions (216.2(c)(1)(ii) and 216.2(c)(2)(x)). The regulations seem clear that if USAID has no control, this Categorical Exclusion applies; however, the regulations are not clear when the Agency finds it appropriate to place environmental, fiduciary and other controls on the loaning institution. The Colombia Mission RLO's legal position on the application of the Categorical Exclusion for all LPG DCAs, presented above, is acknowledged and understood. The LAC Bureau Environmental Officer's opinion is that the credit institution Categorical Exclusion doesn't apply when controls are placed in the agreement, thus the Threshold Determination should be Negative with Conditions. Further, according to the 'notwithstanding' language of 216.2(c)(3), the environmental procedures will apply to any project, program or activity, even when it appears as categorically excluded, if it is subject to the control of USAID and may have a significant impact.

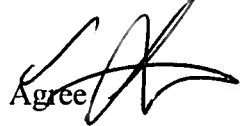
Even though the LAC BEO disagrees with the RLO's position, this doesn't mean we can't reach agreement on how to move forward. The MEO and REA set out above strong justification for conducting the appropriate environmental analyses, thus supporting a Negative with Conditions Determination. As there is general consensus on imposing the environmental requirements, it is recommended that the Mission record it's legal position in the environmental compliance documents, and from a policy perspective, employ the Negative with Conditions Threshold Determination.

As the regulations provide, if the BEO and Mission Director have a difference of opinion on the appropriate Threshold Decision the matter is raised to the Assistant Administrator for resolution. The LAC BEO asks that if there is disagreement that sufficient time be allowed to fully brief LAC Bureau management.

Decision:

USAID/Colombia's existing LPG DCAs agreements that include the standard DCA agreement template will receive:

A categorical exclusion from the requirement to prepare an Initial Environmental Examination, Environmental Assessment, or Environmental Impact Statement; or

Agree 

Disagree

Discuss

Other: _____

A Negative Determination with Conditions determination, requiring adherence to the environmental compliance procedures of 216.3, usually processed through an Initial Environmental Examination.

Agree

Disagree

Discuss

Other: _____

Drafted: Hammel, Rebecca, Resident Legal Officer
Emily Waytoti, Alternate Mission Environmental Officer

Clearances:

Paul Schmidtke, REA _____email_____ Date: _11/16/17_____

Diana Shannon, LAC BEO _____email_____ Date: _11/16/17_____



Rebecca Hammel <rhammel@usaid.gov>

Re: USAID/Colombia DCA LPGs, final copy from Rebecca and new copy with BEO further comments

Diana Shannon <dshannon@usaid.gov>

Thu, Nov 16, 2017 at 9:57 AM

To: Emily Waytoti <ewaytoti@usaid.gov>

Cc: Paul Schmidtke <pschmidtke@usaid.gov>, Rebecca Hammel <RHammel@usaid.gov>

Hola Emily and other colleagues:

By way of this email, I clear as LAC BEO.

Many thanks for all your work on this DCA matter.

Diana

Diana E. Shannon
Bureau Environment Officer
Bureau for Latin America & the Caribbean
USAID, Washington DC
Office: +1-202-712-0861
Mobile: +1-571-309-8805
dshannon@usaid.gov

USAID env compliance templates - <https://sites.google.com/a/usaid.gov/reg-216-templates/home?pli=1>

[Quoted text hidden]



Rebecca Hammel <rhammel@usaid.gov>

Re: USAID/Colombia DCA LPGs, final copy from Rebecca and new copy with BEO further comments

Emily Waytoti <ewaytoti@usaid.gov>
To: Rebecca Hammel <RHammel@usaid.gov>

Thu, Nov 16, 2017 at 10:04 AM

Hi Rebecca,

Paul is on AL. Can this email serve as his clearance?

Thanks,

Emily

----- Forwarded message -----

From: **Paul Schmidtke** <pschmidtke@usaid.gov>

Date: Tue, Nov 14, 2017 at 7:12 AM

Subject: Re: USAID/Colombia DCA LPGs, final copy from Rebecca and new copy with BEO further comments

To: Diana Shannon <dshannon@usaid.gov>

Cc: Emily Waytoti <ewaytoti@usaid.gov>

Great Diana -

Looking forward Emily to the final decision.

Thanks

Paul

Paul Schmidtke
Regional Environmental Advisor
USAID/South America
Lima, Peru
51-1-618-1422 (work)
51-975-526-674 (cell)

God is love. I will love

On Mon, Nov 13, 2017 at 4:03 PM, Diana Shannon <dshannon@usaid.gov> wrote:

Hola Emily,

Thank you for talking with me by phone. I understand much more where you and the technical office are coming from.

Attached is the final version that Rebecca sent on Oct 27. And I edited the BEO section, cutting out some language and offering the consensus approach recommendation.

Let me know if you have any further comments or questions. I will stand by as the Mission moves forward with its decisions.

Diana

**DEVELOPMENT CREDIT AUTHORITY
("DCA")**

***MODEL DCA LOAN PORTFOLIO
GUARANTEE
AGREEMENT (INCLUDING
FOOTNOTES)***

PREPARED BY

**OFFICE OF GENERAL COUNSEL
U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT**

PLEASE NOTE THAT THIS MODEL FORM IS ONLY INTENDED FOR USE BY RLOS AND GC. THE MODEL FORM FOR LOAN PORTFOLIO GUARANTEE AGREEMENTS CONTAINS NUMEROUS FOOTNOTES FOR THE DRAFTER THAT EXPLAINS THE BACKGROUND FOR VARIOUS PROVISIONS AND OFFER GENERAL GUIDANCE. THE FOOTNOTES SHOULD BE CONSULTED WHILE DRAFTING THE GUARANTEE AGREEMENT. THIS FORM IS PERIODICALLY UPDATED SO PLEASE SEND ANY COMMENTS OR QUESTIONS TO GC.

LAST REVISED DECEMBER 12, 2016

LOAN PORTFOLIO GUARANTEE AGREEMENT

Guarantee No:

Between

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

and

[INSERT NAME OF GUARANTEED PARTY]

Appropriation:

Budget Plan Code:

Strategic Objective:

Amount Obligated:

Guarantee Number:

Fund Cite:

The information contained in this Agreement may include trade secrets and commercial or financial information which may be privileged and confidential and may be exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552. Furthermore, this information may be prohibited from disclosure under the Trade Secrets Act, 18 U.S.C. 1905.

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Dated as of: **[Insert Date]**

Fiscal Year of Agreement: **[insert FY]**

LOAN PORTFOLIO GUARANTEE AGREEMENT

[Insert name of signatory]

[Insert title – e.g., General Manager]

[Insert name of the Guaranteed Party]

[Insert address]

Subject: **[insert country name]** Loan Portfolio Guarantee
Guarantee No. DCA-**[insert guarantee no. –xxx-DCA-[FY of**

Agreement]-xxx]

Dear **[insert name]**:

The United States Agency for International Development (“**USAID**”) on behalf of the United States of America hereby agrees to partially guarantee certain Qualifying Loans (as hereinafter defined) made by **[insert name of guaranteed party]** (the “**Guaranteed Party**”) in accordance with the provisions of the following attached documents: (1) the Guarantee Term Sheet and (2) the Standard Terms and Conditions. These two attached documents, together with all appendices thereto and this letter, constitute the guarantee agreement (the “**Agreement**”). USAID and the Guaranteed Party are each a “**Party**” and together, the “**Parties**.” Unless otherwise defined, capitalized terms used in the Agreement shall have the meanings ascribed to them in Article XIV of the Standard Terms and Conditions.

Please confirm your acceptance of the terms of the Agreement by signing in the place indicated below and returning two fully executed copies to USAID.

Sincerely,

[insert name]

Mission Director

USAID/[insert Mission]

[Date:_____]

Accepted and agreed:

By: [Insert Name of Signatory]

[Insert Title of Signatory]

[Insert Name of Guaranteed Party]

Date: _____

Attached: Attachments 1 (Guarantee Term Sheet) and 2 (Standard Terms and Conditions)

ATTACHMENT 1 (GUARANTEE TERM SHEET)

A. GUARANTEE PURPOSE. The USAID guarantee provided under the terms and conditions of this Agreement (the “**Guarantee**”) is intended to strengthen the Guaranteed Party’s ability to provide loans to businesses in [**insert country name, relevant region or sector, and other distinguishing features**], thereby stimulating economic growth.

B. THE GUARANTEE. To induce the Guaranteed Party to make “Qualifying Loans” to “Qualifying Borrowers” [for “Qualifying Projects”], the Parties agree to the following terms:

1. **Maximum Authorized Portfolio Amount:** The aggregate principal amount outstanding of all Qualifying Loans covered under the Agreement at any one time shall not exceed the Local Currency equivalent of [amount written out in U.S. Dollars (US\$_____)].
2. **Maximum Cumulative Disbursements Amount:** The maximum cumulative amount of all loan disbursements made under Qualifying Loans shall not exceed [the Local Currency equivalent of [] U.S. Dollars (US\$_____)]. No loan disbursement shall be eligible for coverage under the Agreement unless the amount of such disbursement, together with all previous disbursements made under Qualifying Loans, does not exceed [the Local Currency equivalent of [] U.S. Dollars (US\$_____)].
3. **Maximum Cumulative Principal Amount of Qualifying Loans Made Per Qualifying Borrower:** The Local Currency equivalent of [*insert amount equal to 20% of Maximum Authorized Portfolio Amount*] U.S. Dollars unless otherwise agreed by USAID in writing. The foregoing includes the sum of principal loan disbursements made to a Qualifying Borrower and any of its Affiliates.
4. **Guarantee Percentage:** [] percent of the Guaranteed Party’s net losses of principal only with respect to Qualifying Loans, not to exceed the Guarantee Ceiling.
5. **Guarantee Ceiling:** [*insert amount written out in U.S. Dollars (USD)*], which represents USAID’s maximum liability.
6. **Final Date for Placing Qualifying Loans under Coverage:** [] days prior to the Coverage Expiration Date.
7. **Coverage Expiration Date:** [] years from the date of the Agreement.
8. **Final Date for Submitting Claims:** 180 days after the Coverage Expiration Date except as set forth in Article V of the Standard Terms and Conditions attached hereto, provided that no claims may be submitted in connection with any default on a Qualifying Loan that occurs after the Coverage Expiration Date.
9. **Currency of Qualifying Loans:** Qualifying Loans placed under the Guarantee shall be in [Local Currency]/[U.S. Dollars].
10. **Qualifying Loan Maturity Date:** For each Qualifying Loan, the maturity date for the entire principal amount of such Qualifying Loan shall be no less than [] months and no later than [] months from the date of the initial disbursement of the Qualifying Loan, unless otherwise agreed by USAID in writing.

11. **Currency of Guarantee Payment:** Claim payments made by USAID under the Guarantee and in accordance with this Agreement shall be in [Local Currency]/[U.S. Dollars]. If the claim submission includes a request that USAID make a payment hereunder for a non-USD Qualifying Loan in USD or if USAID cannot make the payment in the currency of the Qualifying Loan, then such payment will be based on the Reporting Exchange Rate at the time of claim submission, which shall be calculated on the ninetieth (90th) day following the date a written final demand for full payment under the Qualifying Loan has been made by the Guaranteed Party against the Defaulting Borrower.
12. **Guarantee Reporting Periods:** The first Guarantee Reporting Period will commence upon the date of the Agreement and end on [March 31, 20--/ September 30, 20--] OR [December 31, 20--/June 30, 20--]. Subsequent Guarantee Reporting Periods will consist of six months, beginning with the six-month period from [April 1, 20-- to September 30, 20--/October 1, 20-- to March 31, 20--] OR [January 1, 20-- to June 30, 20--/July 1, 20-- to December 31, 20--]. The final Guarantee Reporting Period will end on the Coverage Expiration Date, and may be less than a six-month period. In each case, or such other reporting period determined by USAID and notified to the Guaranteed Party in writing.
13. **Risk Analysis:** The Parties understand that USAID has conducted a detailed risk based review of the Guaranteed Party, including a review of the Guaranteed Party's management, corporate governance, risk analysis, financial condition, asset quality, credit policies and credit approval procedures.

C. CRITERIA FOR QUALIFYING LOANS. In addition to the criteria set forth in the Standard Terms and Conditions, the following criteria apply for a Loan to be placed under coverage under this Agreement.

14. **Qualifying Loan:** A Loan made by the Guaranteed Party to a "Qualifying Borrower" on or after the date of the Agreement [for a "Qualifying Project"], which meets the criteria specified in Section 2.02 of the Standard Terms and Conditions; provided, however, that no Qualifying Loan shall be eligible for coverage under the Agreement if more than [fifty percent (50%)] of total payments of principal on such Loan is guaranteed by any financial institution, investment company, commercial guarantor, insurance company, government, or international donor organization, including USAID (excluding, however, a parent guarantee from the parent company with respect to the Qualifying Borrower, which serves as collateral).
15. **Qualifying Borrowers:** [non-sovereign [country] micro-, small-, and medium-sized enterprises (MSMEs), microfinance institutions (MFIs), and non-governmental organizations (NGOs)], established under [country] law, that are private enterprises [in sectors, such as ...[insert relevant sectors]]; provided, however, that a Qualifying Borrower cannot be an Affiliate of the Guaranteed Party. A Qualifying Borrower includes any Affiliate of that Qualifying Borrower. Any question regarding who is a Qualifying Borrower may be resolved in consultation with USAID, and USAID may waive in writing any restriction on loans to Affiliates.
16. **[Qualifying Projects:** Investments designed to encourage growth of Qualifying Borrowers in [insert] sectors].

D. USAID GUARANTEE FEES.

- 17(a). **Origination Fee:** _____ percent (____%) of the Maximum Authorized Portfolio Amount], which is [amount written out in U.S. Dollars (US \$)].

- 17(b). **Utilization Fee:** ____ percent (____%) per annum of the average outstanding principal amount of all Qualifying Loans . This amount is to be calculated by multiplying ____ percent (____%) per annum by the average of the principal amount outstanding of all Qualifying Loans at the end of the two most recent Guarantee Reporting Periods. The Utilization Fee is payable semi-annually, as billed.

For illustrative purposes only, a hypothetical Utilization Fee is calculated as follows:

- 2% per annum fee of average outstanding principal amount of all Qualifying Loans.
- Outstanding principal amount for the two most recently ended Guarantee Reporting Periods are \$300,000 and \$100,000; resulting in an average of \$200,000.
- Utilization Fee for the six-month period is 1% (i.e. half of the 2% per annum rate) of \$200,000, which equals \$2,000.

18. **Currency of Guarantee Fee Payments:** U.S. Dollars with respect to the Origination Fee and Local Currency or U.S. Dollars with respect to the Utilization Fee, as further specified in Section 4.03 of the Standard Terms and Conditions.

D.MISCELLANEOUS.

19. **Payment Instructions:**

(1) U.S. Dollar payments to USAID shall be made directly to the U.S. Department of Treasury's account with the Federal Reserve Bank of New York via electronic funds transfer for further credit to USAID. U.S. Dollar wire transfers may be made via a U.S. commercial bank (U.S. Fedwire Participant Bank – Type Code 10) or, if required, via a Central Bank with an account with the Federal Reserve (Type Code 15)

The following information shall be included in the wire transfer instructions:

Account Name: US Department of Treasury
Bank Name: Federal Reserve Bank New York (FRBNY)
Bank Address: 33 Liberty Street, New York, New York 10045
TREAS/NYC FUNDS TRANSFER DIVISION
Account Number: 72000001
Routing Number: 0210-3000-4
Ref: [Origination Fee]/[Utilization Fee]/[Post Claim Recoveries]
DCA Agreement Number [Insert Guarantee Number]

(2) Local Currency payments to USAID shall be made directly to the USAID Controller or USAID Cashier in-country via a check made payable to *[insert USG entity as instructed by Mission, such as USDO, American Embassy in ____]*, applying the same reference number and guarantee number as stated above. Such reference number and guarantee number are “USAID a/c 72X4266, **[insert guarantee number]**”.

20. **Address for Notices:**

USAID: U.S. Agency for International Development
[Mission/Operating Unit Address]
[Tel:]
Attn: Mission Director

A copy of each such notice to USAID shall also be sent by mail:

U.S. Agency for International Development
Development Credit Authority
E3/DC, Rm. 2.10, RRB
1300 Pennsylvania Ave., N.W.
Washington, DC 20523
Tel: 202-712-1380
Attn: Portfolio Manager

GUARANTEED PARTY: [Name]
[Address]
[Tel:]
[Attn:]

USAID FINANCIAL AGENT: Midland Loan Services Inc.
808 17th Street, N.W.
P.O. Box 96206
Washington, DC 20006
Tel: 1-202-835-4338
Fax: 1-202-835-4303
Attn: Violet Alfred
Government Services Group

ATTACHMENT 2 (Standard Terms and Conditions)

ARTICLE I

The Guarantee

Section 1.01. **The Guarantee.** USAID agrees to pay the Guaranteed Party an amount equal to the Guarantee Percentage of the Guaranteed Party's net losses of principal only, as specified in Appendix 1 (*Request for Payment of Claim*), arising solely from payment defaults by a Qualifying Borrower under Qualifying Loans; *provided* that the total amount of payments made by USAID to the Guaranteed Party under the Agreement shall not exceed the Guarantee Ceiling. For purposes of clarification, the USAID Guarantee is not a first loss guarantee, but a *pro rata* risk sharing guarantee of losses after collection efforts pursuant to the claim provisions at Article V and a *pro rata* sharing of Recovered Funds as defined at Section 6.02.

Section 1.02. **The Guarantee Ceiling.** The Guarantee Ceiling specified in Section 5 of the Guarantee Term Sheet represents the maximum total amount of payments (stated in U.S. Dollars) that may be made by USAID to pay claims to the Guaranteed Party under the Agreement [including to purchase Local Currency to pay Local Currency claims, as calculated using the Claim Payment Exchange Rate]. At such time as the total payments by USAID for this purpose equal the Guarantee Ceiling, USAID shall have no further obligations to the Guaranteed Party under the Agreement.

Section 1.03. **Maximum Authorized Portfolio Amount.** The Maximum Authorized Portfolio Amount is specified in Section 1 of the Guarantee Term Sheet. No new Qualifying Loan may be placed under coverage of the Guarantee unless the principal amount outstanding of all Qualifying Loans then under coverage at the then applicable Reporting Exchange Rate, together with such new Qualifying Loan, will not exceed the Maximum Authorized Portfolio Amount as of the date such new Qualifying Loan is placed under coverage. For the avoidance of doubt, if as a result of the appreciation of the Local Currency against the U.S. Dollar, the U.S. Dollar equivalent of the aggregate amount of Qualifying Loans placed under coverage exceeds the Maximum Authorized Portfolio Amount, the obligations of USAID under the Agreement shall still be subject to the limitation set forth in Section 1.02 (*The Guarantee Ceiling*).

Section 1.04. **Maximum Cumulative Disbursements Amount and Maximum Cumulative Principal Amount of Qualifying Loans Made Per Qualifying Borrower.** The Maximum Cumulative Disbursements Amount is specified in Section 2 of the Guarantee Term Sheet. No new Qualifying Loan may be placed under coverage of the Guarantee unless the principal amount of all prior disbursements made under Qualifying Loans, together with the new Qualifying Loan, will not exceed the Maximum Cumulative Disbursements Amount. The Maximum Cumulative Principal Amount of Qualifying Loans Made Per Qualifying Borrower is specified in Section 3 of the Guarantee Term Sheet.

Section 1.05. **Limitation on Interest, Costs and Expenses.** In no event shall USAID be liable for interest, late fees, penalties, or any other costs or expenses with respect to any Qualifying Loan.

Section 1.06. **Reduction of Guarantee Coverage.** USAID has agreed to the Maximum Authorized Portfolio Amount on the understanding that such amount approximates the aggregate principal amount of the Qualifying Loans which the Guaranteed Party intends to maintain under guarantee coverage of the Guarantee at any one time. If at any time after the first twelve (12) months of the Agreement, the Agreement is not being adequately utilized (as determined by USAID), the parties shall reduce the

unused portion of the Maximum Authorized Portfolio Amount and/or the Maximum Cumulative Disbursements Amount and the Guarantee Ceiling, as may be mutually agreed.

ARTICLE II

Qualifying Loans

Section 2.01. **Guarantee Coverage.** No Qualifying Loan shall be covered by the terms of the Agreement or placed under the coverage of the Guarantee by the Guaranteed Party unless such Loan is deemed a Qualifying Loan in accordance with the terms of this Agreement.

Section 2.02. **Criteria for a Qualifying Loan.** A Qualifying Loan is a Loan made by the Guaranteed Party that meets the criteria in the Guarantee Term Sheet and that satisfies each of the following statutory or regulatory policy related criteria:

- a) The Qualifying Loan must not be used to finance any of the following:
 - (1) Goods or services which are to be used primarily to meet military requirements or to support police or other law enforcement activities,
 - (2) Surveillance equipment,
 - (3) Gambling equipment, supplies for gambling facilities or any hotels, casinos or accommodations in which gambling facilities are or are planned to be located,
 - (4) Activities which significantly degrade national parks or similar protected areas or introduce exotic plants or animals into such areas, or
 - (5) Military assistance, explosives or fireworks,
 - (6) Activities which relate to trafficking in persons, forced labor, the practice of prostitution or sex trafficking, or
 - (7) Activities directly or indirectly involving in any way or manner Ammonium Nitrate (AN) or Calcium Ammonium Nitrate (CAN).
- (b) The Qualifying Loan must not be used to finance any of the following without the prior written approval of USAID. Moreover, approval of loans to finance activities described in subsections (2), (3), (7) or (8) below will be contingent upon the submission by the Guaranteed Party of evidence sufficient to demonstrate compliance with local environmental laws and to enable USAID to make an assessment of the environmental impact of such activities:
 - (1) Pharmaceuticals,
 - (2) Pesticides,
 - (3) Logging equipment,
 - (4) Luxury goods (including alcoholic beverages and jewelry),

- (5) Establishing or expanding any enterprise that will export raw materials that are likely to be in surplus in world markets at the time such production becomes effective and that are likely to cause substantial injury to U.S. producers,
- (6) Tobacco or agribusiness activities contributing to tobacco production, promotion or use,
- (7) Activities which would result in the loss of forest lands due to livestock rearing, road construction or maintenance, colonization of forest lands or construction of dams or other water control structures,
- (8) Activities which are likely to have a significant adverse effect on the environment, including any of the following (to the extent such activities are likely to have a significant adverse impact on the environment):
 - (a) programs of river basin development,
 - (b) irrigation or water management projects (including dams and impoundments),
 - (c) agricultural land leveling,
 - (d) drainage projects,
 - (e) large scale agricultural mechanization,
 - (f) new lands development,
 - (g) resettlement projects,
 - (h) penetration road building or road improvement projects,
 - (i) power plants,
 - (j) industrial plants, or
 - (k) potable water and sewerage projects other than those that are small-scale.
- (9) Activities which the Guaranteed Party is aware are reasonably likely to contribute to the violation of internationally recognized rights of workers.
- (10) Activities directly associated with relocating jobs from the United States to another country .

(c) The Qualifying Loan must not be used to finance equipment, research and/or services related to involuntary sterilization or the performance of abortion as a method of family planning.

(d) The Qualifying Loan must not be used to provide family planning services unless the Qualifying Borrower (i) provides those services on a voluntary and informed choice basis and (ii) provides information, access, or referral to a range of family planning methods. To help ensure this, the

Guaranteed Party will include the following statement in the loan agreement: “The Borrower agrees that family planning services provided by the enterprise or organization financed by this loan are provided on a voluntary and informed choice basis, and provide information, access, or referral to a range of family planning methods.”

(e) The Qualifying Loan must be made at interest rates and on terms consistent with those generally prevailing among private commercial lenders in the Qualifying Borrower’s country.

(f) The Qualifying Loan must be funded from the Guaranteed Party’s capital or funds acquired by the Guaranteed Party on a market basis, and not from subsidized loan capital received from government sources, international agencies, not-for-profit institutions or private third parties.

(g) The Qualifying Loan must have a scheduled maturity date for the entire principal amount that is consistent with the Qualifying Loan Maturity Date.

(h) Except as otherwise agreed by USAID in writing, the Qualifying Loan must not be made in connection with the refinancing, repayment or repurchase of an existing loan.

(i) The Qualifying Loan must have been placed under coverage of the Guarantee in compliance with Article III of the Standard Terms and Conditions and each other applicable provision of the Agreement.

(j) The Qualifying Loan must not be convertible into any kind of equity.

Section 2.03. **Revisions to Qualifying Loan Criteria.** USAID shall have the right at any time to revise, add to or delete any of the Qualifying Loan criteria set forth in Section 2.02 by providing written notice to the Guaranteed Party and any such change will become effective thirty (30) business days following delivery (electronic or otherwise) of such notice to the Guaranteed Party. No change in the Qualifying Loan criteria taken pursuant to this Section 2.03 shall affect the eligibility of any Qualifying Loan that was placed under the coverage of the Guarantee prior to the effective date of any such change.

Section 2.04. **Determinations Regarding Qualifying Loans.** The determination that a Loan placed under coverage of the Guarantee meets the definition of a Qualifying Loan shall be made and certified to by the Guaranteed Party by submitting a Transaction Report in USAID’s internet-based credit management system (“CMS”) (at <https://admin.cms.usaid.org>) (See CMS screen shots attached as Appendix 2.)

Upon receipt by USAID of the certification through CMS, each Loan entered in CMS shall be deemed a Qualifying Loan under this Agreement and the certification made by the Guaranteed Party that a Loan meets the definition of a Qualifying Loan will be binding on the Parties in the absence of a determination by USAID that such certification was the result of gross negligence, fraud or misrepresentation. Upon any such determination, such Loan shall no longer be deemed a Qualifying Loan under the Agreement and shall no longer be covered under this Agreement and USAID shall have no obligations whatsoever with respect to such Loan.

Section 2.05. **Amendments, Assignment, Restructuring and Transfer of Qualifying Loans.** The Guaranteed Party shall not restructure or make any material amendments or modifications to the terms or conditions of a Qualifying Loan without the written consent of USAID, including extensions of the

final principal repayment date. No assignment or transfer of any of the Guaranteed Party's rights or obligations under any Qualifying Loan or the Agreement shall be made without the written consent of USAID. For the avoidance of doubt, the Guaranteed Party shall not restructure a Qualifying Loan to place any form of capitalized interest, accumulated fees or administrative expenses under coverage of this Agreement. No Qualifying Loan shall be or become part of a syndication or participation without USAID's prior written consent.

ARTICLE III

Placing Qualifying Loans Under Guarantee Coverage

Section 3.01. **Time Period for Placing Qualifying Loans under Coverage.** Except as USAID may otherwise agree in writing, no Qualifying Loan shall be covered by the terms of the Agreement unless (i) such Qualifying Loan is made on or prior to the Final Date for Placing Qualifying Loans under Coverage as indicated in Section 6 of the Guarantee Term Sheet; (ii) such Qualifying Loan is identified to USAID in the first Qualifying Loan Schedule required to be submitted to USAID after the date of the initial disbursement of such Qualifying Loan; and (iii) each of the other applicable conditions in this Agreement have been satisfied.

Section 3.02. **Procedure for Placing Qualifying Loans under Coverage.** Subject to Sections 2.04, 3.01, 7.01, 9.05 and each other requirement of this Agreement, each Qualifying Loan will be deemed to be covered under the Agreement automatically on the date) the Guaranteed Party enters the Qualifying Loan in CMS and certifies in CMS that such Loan meets the criteria for a Qualifying Loan. Nothing in this Section shall preclude the Parties from addressing the issue of the eligibility of a Loan for coverage under the Agreement after the Loan is placed under coverage.

Section 3.03. **Procedure for Removing Loans from Coverage.**

(a) **Removal by USAID.** Subject to the provisions of Sections 2.03 and 2.04, at any time USAID may remove any Loan from the coverage of the Guarantee if USAID determines that such Loan is not a Qualifying Loan. Such removal will be effective upon receipt by the Guaranteed Party of a notice from USAID indicating the Loan to be removed from coverage and stating the reason for such removal. USAID shall use reasonable efforts to consult with the Guaranteed Party prior to issuing any such notice in order to verify that the Loan is not a Qualifying Loan.

(b) **Removal by the Guaranteed Party.** The Guaranteed Party may remove any Qualifying Loan from the coverage of the Guarantee at any time for any reason [, including permitting new Qualifying Loans to be placed under coverage without exceeding the Maximum Authorized Portfolio Amount]; provided, however, for the avoidance of doubt, any Loan that is placed under coverage shall be included in the calculations pertaining to Maximum Cumulative Disbursements Amount notwithstanding its subsequent removal. The Guaranteed Party shall promptly notify USAID by written notice of its decision to remove any Qualifying Loans from coverage.

(c) **No Reinstatement of Coverage.** No Qualifying Loan removed from the coverage of the Guarantee may be placed again under coverage.

ARTICLE IV

Guarantee Fees

Section 4.01. **Guarantee Fees**. In consideration for the Guarantee, the Guaranteed Party shall pay to USAID the following non-refundable fees (the “**Guarantee Fees**”):

(a) **Origination Fee**. No later than thirty (30) days after the date of the Agreement, the Guaranteed Party shall pay to USAID a one-time Origination Fee, as specified in Section 17(a) of the Guarantee Term Sheet. No Qualifying Loan may be placed under coverage until such fee is paid in full.

(b) **Utilization Fee**. The Guaranteed Party shall pay to USAID the Utilization Fee, as specified in Section 17(b) of the Guarantee Term Sheet, with respect to each Guarantee Reporting Period. The Utilization Fee shall be due no later than thirty (30) days after receipt of a Notice of Due Payment.

Section 4.02. **Failure to Pay Guarantee Fees**. If either the Origination Fee or the Utilization Fee is not paid as and when due and payable, USAID may, upon written notice to the Guaranteed Party, terminate or suspend (and subsequently terminate at its discretion) the Agreement pursuant to Section 12.02 of the Standard Terms and Conditions..

Section 4.03. **Currency of Guarantee Fee Payments**. Payments of amounts owing to USAID under this Article IV shall be made in the Currency of Guarantee Fee Payments. With respect to the Utilization Fee, in the event the (i) Guarantee Fee is to be paid in U.S. Dollars and (ii) Qualifying Loan is in Local Currency, the fee shall be calculated at the Reporting Exchange Rate as specified in the Notice of Due Payment.

ARTICLE V

Claim Procedures

Section 5.01. **Claim Requirements**. No claim relating to the Guaranteed Party’s losses in connection with a Qualifying Loan shall be honored by USAID unless the Guaranteed Party certifies to USAID, and USAID thereafter reasonably determines, that each of the following requirements has been met:

(a) as a consequence of a payment default by a Qualifying Borrower under any Qualifying Loan (such borrower, a “**Defaulting Borrower**”), the total outstanding principal amount of the applicable Qualifying Loan has become immediately due and payable, and the Guaranteed Party has made a written demand upon the Defaulting Borrower for full payment of all amounts due and payable;

(b) Reasonable Collection Efforts have been diligently pursued against the Defaulting Borrower and any other entity that may be liable on the Qualifying Loan, in accordance with Applicable Law and standard banking practice in [country of Borrower] and [country of Lender]; and

(c) after such collection activities, the Guaranteed Party has either (i) certified to USAID that it has written off the entire outstanding balance (including principal and interest) of the Qualifying Loan as a bad debt expense, or (ii) certified to USAID that it (A) is unable, because of a legal impediment or significant impracticality, to take the action described in (i) above, and (B) has established a specific provision of funds (which is evidenced on its balance sheet or income statement) for possible loan losses

associated with the default by the Defaulting Borrower, and the amount of such provision equals or exceeds twenty percent (20%) of the amount of defaulted principal.

Section 5.02. **Submission of Claim.** The Guaranteed Party shall make a claim with respect to any Qualifying Loan by submitting to USAID a claims form in the format set forth in Appendix 1 (*Request for Payment of Claim*) for each such Qualifying Loan. The Guaranteed Party shall also provide (i) borrower's statement(s), (ii) copies of demand letters, (iii) proof of loan disbursement, and (iv) proof of requirements in 5.01(c).

Section 5.03. **Time Period for Submission of Claim.** In order to ensure that Reasonable Collection Efforts have been diligently pursued, no claim shall be submitted earlier than ninety (90) days after the written final demand for full payment under the Qualifying Loan has been made by the Guaranteed Party against the Defaulting Borrower. In order to ensure that claims are submitted in a timely manner, no claim shall be submitted later than the Final Date for Submitting Claims; provided, however, that no claim may be submitted to USAID if the date of such demand for payment occurs after the cancellation of coverage pursuant to Section 12.02 (*Termination or Suspension by USAID for Cause*) or Section 4.02 (*Failure to Pay Guarantee Fees*).

Section 5.04. **Approval of Claim for Payment.** USAID reserves the right to request further documentation or clarification of any claim submitted prior to approving a claim for payment, including, but not limited to evidence of other loans to the same Defaulting Borrower which are in default and not covered under this Agreement and evidence of the collection and recovery efforts undertaken by the Guaranteed Party pursuant to Section 5.01 (a) and (b). A claim will be denied if USAID reasonably determines that: (a) the requirements stated in Sections 5.01 through 5.03 above have not been fully satisfied; or (b) the Loan did not qualify as a Qualifying Loan. Neither approval nor payment of a claim shall be deemed to waive USAID's right to contest such claim subsequently on these or any other grounds.

Section 5.05. **Payment of Claim.** In order for USAID to approve a claim for payment, the claim must meet the requirements set forth in Section 5.01 and be submitted in accordance with the procedures set forth in Sections 5.02 and 5.03. Upon approval of a claim for payment by USAID and subject to the Guarantee Ceiling, USAID shall pay to the Guaranteed Party the approved amount of the claim in the Currency of Guarantee Payment. USAID shall have the right to reduce the amount of payment of any claim by the amount of any unpaid Guarantee Fees.

Section 5.06. **Repayment.**

- (a) Notwithstanding any other provision of the Agreement, USAID shall have no obligation to make payment to the Guaranteed Party for any loss arising out of gross negligence, fraud or misrepresentation or for any claim that is otherwise illegal, invalid or materially inconsistent with the provisions of the Agreement.
- (b) USAID reserves the right to demand a refund of any payment made to the Guaranteed Party if, prior to or at the time such payment was made, [the Guaranteed Party or any Key Individual was convicted of a narcotics offense or was engaged in drug trafficking as defined in Part 140 of Title 22 of the United States Code of Federal Regulations and/or] the Guaranteed Party or any of the individuals named in Section 8.16 is found to be in violation

of the Foreign Corrupt Practices Act and/or other applicable anti-corruption violations set forth at Section 8.16.

- (c) If, subsequent to paying any claim made by the Guaranteed Party, USAID determines that either subsection (a) or (b) above applies, the Guaranteed Party shall, upon the request of USAID, refund immediately to USAID the appropriate amount of the payment obtained plus, if USAID so requests, pay interest accruing from the date of the payment at the rate of one percent (1%) per month.

ARTICLE VI

Post-Claim Recoveries

Section 6.01. **Duty to Pursue Collection.** After making a claim under and in accordance with the Agreement, the Guaranteed Party shall continue to diligently pursue all Reasonable Collection Efforts against the Defaulting Borrower for so long as commercially reasonable and in accordance with the Guaranteed Party's standard collections procedures and policies.

Section 6.02. **Reimbursement of USAID.** If USAID has paid a claim with respect to a Qualifying Loan, and the Guaranteed Party receives or recovers any funds relating to or in satisfaction of amounts owed by the Defaulting Borrower under the Qualifying Loan, whether received or recovered directly from the Qualifying Borrower, another guarantor, a collateral agent or any other party, (any such funds, hereinafter defined as "**Recovered Funds**"), the Guaranteed Party shall promptly first reimburse USAID on a *pro rata* basis the Recovered Funds (which, for the avoidance of doubt, is the Guarantee Percentage of Recovered Funds), after deducting reasonable and documented expenses actually incurred in its collection efforts. If a Defaulting Borrower is in default on one or more additional loans made by the Guaranteed Party that are not covered by the Agreement, the Guaranteed Party shall pursue collection on the Qualifying Loan made to such Defaulting Borrower prior to, or concurrently with, pursuing collection on such additional loans. Moreover, if the Guaranteed Party obtains Recovered Funds arising from the Qualifying Loan as well as from any other loan made by the Guaranteed Party to a Defaulting Borrower (any such funds from other than a Qualifying Loan, hereinafter defined as the "**Other Recovered Funds**," together with the Recovered Funds, the "**Total Recovered Funds**"), such Total Recovered Funds shall be applied to all defaulted loans made by the Guaranteed Party to the Qualifying Borrower on a *pro rata* basis (unless otherwise required by specific collateral arrangements already in place as of the date of this Agreement). Payments made to USAID under this section shall be made in the Currency of Guarantee Payment and must be paid within ninety (90) calendar days from the date of recovery. USAID shall have the right to charge interest at the rate of one percent (1%) per month on any amount not paid to USAID within this ninety (90) day period.

Section 6.03. **Certificate of Post-Claim Recoveries.** Following the payment of any claim under the Agreement, the Guaranteed Party shall deliver to USAID a Certification of Post-Claim Recoveries, substantially in the form set forth in Appendix 3 (*Certification of Post-Claim Recoveries*), for each calendar year. USAID may refuse to pay any future claims if the Guaranteed Party has failed to submit an accurate Certification of Post-Claim Recoveries as required by the preceding sentence. In addition, following the Coverage Expiration Date, the Guaranteed Party shall continue to submit, on an annual basis, a Certification of Post-Claim Recoveries, substantially in the form set forth in Appendix 3 (*Certification of Post-Claim Recoveries*), no later than sixty (60) days after the end of each calendar year until three (3) years after the Coverage Expiration Date or longer if so requested by USAID. The Guaranteed Party further agrees to comply with reasonable requests from USAID concerning post-claim

recoveries, including any request to submit an annual or semi-annual schedule of net recoveries with respect to each Defaulting Borrower.

Section 6.04. **Assignment of Claim.** At any time, on or after the date USAID pays a claim in accordance with the terms of this Agreement, upon USAID's request the Guaranteed Party shall execute an assignment to USAID or USAID's designee, in form and substance acceptable to USAID or USAID's designee, of the Guaranteed Party's rights to receive the share of net recoveries due to USAID and/or to pursue collection of USAID's *pro rata* share of net recoveries under each Qualifying Loan.

ARTICLE VII

Conditions Precedent

Section 7.01. **Conditions Precedent.** Notwithstanding anything in the Agreement to the contrary, USAID's obligation to enter into this Agreement and provide the Guarantee hereunder is subject to USAID receiving the following from the Guaranteed Party and USAID notifying the Guaranteed Party in writing that the materials and information supplied are in form and substance satisfactory to USAID:

(i) **Conditions Precedent to Signing:** Concurrently with the signing of this Agreement, the following conditions shall be fulfilled:

- (a) A copy of the fully executed Agreement signed by the Guaranteed Party and USAID.
- (b) A certificate of the Guaranteed Party, dated as of the date of the Agreement and in form and substance satisfactory to USAID, as to the authority of the persons signing the Agreement and any appendices hereto on behalf of the Guaranteed Party.
- (c) An Officer's Certificate from a senior officer of the Guaranteed Party certifying that the representations contained in Article VIII are true and complete.

(ii) **Conditions Precedent to Effectiveness:** Within thirty (30) days from the date of this Agreement, the following conditions shall be fulfilled:

(a) A legal opinion (from qualified outside or in-house counsel in good standing) stating in effect that, based on facts and circumstances (and/or documents) presented to such legal counsel by the Guaranteed Party (or otherwise), the representations contained in Sections 8.01 through 8.04 of Article VIII are true and complete.

(b) [A description of the Guaranteed Party's policies and procedures to assure that projects financed by the Guaranteed Party are environmentally sound and comply with Applicable Law and any USAID specific requirements.]

[(c)] [The Guaranteed Party must provide USAID with the names of Key Individuals for the purpose of completing a Certification, in the form of Appendix 4 (*Key Individual Certification*), regarding Narcotics Offenses and Drug Trafficking. This Certification need not be completed and approved prior to the execution and implementation of the Agreement. However, in the event that each

required Certification of Narcotics Offenses and Drug Trafficking is not provided to USAID or is not approved by the U.S. Government, the Agreement shall be deemed null and void.].

(d) Payment of the Origination Fee pursuant to Section 4.01 of the Agreement.

(e) Such other documents or conditions reasonably requested by USAID.

For the avoidance of doubt, the Parties acknowledge and agree that the Guarantee shall not be effective and no Qualifying Loan shall be eligible for coverage under the Guarantee until each of the Conditions Precedent have been satisfied in accordance with the terms and conditions herein.

ARTICLE VIII

Representations and Warranties

For purposes of the Agreement, the Guaranteed Party represents and warrants as of the date hereof, as of the date the Qualifying Loan is entered into and at the end of each Guarantee Reporting Period, in each case by reference to the facts and circumstances existing at such date, that:

Section 8.01. **Organization, Existence**. The Guaranteed Party is duly organized and validly existing where incorporated or chartered. The Guaranteed Party has full power, authority and legal right to carry out its business as currently conducted, to execute, deliver and perform the Agreement and all other documents which the Agreement contemplates will be executed by the Guaranteed Party and to carry out all the activities which the Agreement contemplates will be carried out by the Guaranteed Party.

Section 8.02. **Authorization, Binding Effect**. The execution, delivery and performance by the Guaranteed Party of the Agreement have been duly authorized by all necessary actions of the Guaranteed Party, and the Agreement constitutes a legal, valid and binding obligation of the Guaranteed Party enforceable in accordance with its terms.

Section 8.03. **No Conflict**. Neither the entry into the Agreement nor the compliance with its terms will conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default or require any consent under, any instrument or arrangement to which the Guaranteed Party is a party or by which it is bound, or violate any of the terms or provisions of its organizational documents, any judgment, decree or order or any Applicable Law.

Section 8.04 **Governmental Approvals**. No approval, consent, registration, filing, agreement, certificate, permit, authority or exemption of any kind is required from any governmental authority in order for the Guaranteed Party to enter into the Agreement and perform its duties, except such as have already been obtained and are in full force and effect.

Section 8.05. **Debarment Status**. For the three (3) years preceding the date of the Agreement the Guaranteed Party has not been on any list of ineligible or debarred suppliers or firms maintained by the U.S. Government. A list of organizations suspended or debarred by the U.S. Government is available at www.SAM.gov.

Section 8.06. **No Amendments to Charter.** The Guaranteed Party's organizational documents have not been amended since [].

Section 8.07. **Compliance with Law.** The Guaranteed Party is in compliance in all material respects with all Applicable Law.

Section 8.08. **Litigation.** There are no pending legal, arbitration, or governmental actions or proceedings to which the Guaranteed Party is a party or to which any of its property is subject which, if adversely determined, could have a Material Adverse Effect and to the best of the Guaranteed Party's knowledge, no such actions or proceedings are threatened or contemplated.

Section 8.09. **Financial Statements; No Material Change; Etc.** All financial statements submitted to USAID in connection with this Agreement fairly and fully present the financial condition of the Guaranteed Party and the results of the Guaranteed Party's operations for the periods covered thereby and are prepared in accordance with [accounting standards generally recognized in _____] consistently applied. Since the dates thereof, there has been no material change in the financial condition or operations of the Guaranteed Party.

Section 8.10 **Defaults Under Other Agreements.** The Guaranteed Party is not in default under any agreement or instrument to which it is a party or under which any of its properties are subject that is material to its financial condition, operations, properties, profits, or business.

Section 8.11. **Pari Passu.** Payment obligations under any Qualifying Loan covered under this Agreement constitutes the direct, general and unconditional obligations of the Qualifying Borrower and rank in all respects at least *pari passu* in priority of payment and in right of security with the payment obligations of all other unsecured and unsubordinated debt of such Qualifying Borrower.

Section 8.12. **Disclosure of Lobbying Activities.**

- (a) No registered lobbyists have made lobbying contacts on behalf of the Guaranteed Party in connection with the Agreement.
- (b) No registered lobbyists shall make lobbying contacts on behalf of the Guaranteed Party in connection with the Agreement unless the Guaranteed Party complies with the requirements of 31 USC 1352(b) and any other applicable U.S. law.

Section 8.13. **Drug Trafficking.** The Guaranteed Party: (1) has not been convicted of a violation of, or a conspiracy to violate, any law or regulation of the United States or any other country concerning narcotic or psychotropic drugs or other controlled substances; (2) is not or has not been an illicit trafficker in any such drug or controlled substance; and (3) is not or has not been a knowing assistor, abettor, conspirator, or colluder with others in the illicit trafficking in any such drug or substance.

Section 8.14. **Trafficking in Persons.** The Guaranteed Party has not been involved in any activities which relate to trafficking in persons, forced labor, the practice of prostitution or sex trafficking.

Section 8.15 **Terrorism.**

- (a) The Guaranteed Party, to the best of its current knowledge, did not provide, within the previous ten years, material support or resources to any individual or entity that commits,

attempts to commit, advocates, facilitates, or participates in terrorist acts, or has committed, attempted to commit, facilitated, or participated in terrorist acts.

(b) Notwithstanding any other provision of the Agreement, loans to any such individuals or entities described in the first sentence of paragraph (a) above are not eligible for coverage under the Agreement and USAID shall have no obligation to pay claims in connection with any such loans, including loans to individuals or entities that:

(i) appear on the master list of Specially Designated Nationals and Blocked Persons, which list is maintained by the U.S. Treasury's Office of Foreign Assets Control (OFAC) and is available online at OFAC's website: <http://www.treasury.gov/resource-center/sanctions/Pages/default.aspx>;

(ii) appear on any list of supplemental information concerning prohibited individuals provided by USAID to the Guaranteed Party; and

(iii) have been designated by the United Nations Security Council UNSC (the "Security Council") sanctions committee as individuals and entities subject to sanctions measures imposed by the Security Council. To determine whether there has been a published designation of an individual or entity by the Security Council, the Guaranteed Party should refer to the consolidated list available online at the Committee's website: <https://www.un.org/sc/suborg/en/sanctions/un-sc-consolidated-list>

Section 8.16. **FCPA Compliance.** Without limiting any other provision of this Article VIII, the internal management and accounting practices and controls of the Guaranteed Party are adequate to ensure compliance with the United States Foreign Corrupt Practices Act and/or any other Applicable Law, regulation, order, decree or directive having the force of law and relating to bribery, kick-backs or similar business practices. The Guaranteed Party and each of its officers, directors, owners, partners, agents, key employees, other persons with primary management or supervisory responsibilities individually and affiliates are otherwise, to the best of their current knowledge in full compliance with the United States Foreign Corrupt Practices Act and/or any other Applicable Law, regulation, order, decree or directive having the force of law and relating to bribery, kick-backs or similar business practices. The Guaranteed Party shall not knowingly provide material support or resources to any individual or entity that commits, attempts to commit, advocates, facilitates, or participates in corrupt practices, or has committed, attempted to commit, facilitated, or participated in such practices.

Section 8.17. **Other U.S. Government Agreements.** The Guaranteed Party has not entered into any other guarantees and/or financing agreements with any other U.S. government agency and/or entity and no Qualifying Loan is subject to coverage by any other guarantees and/or financing agreements with any other U.S. government agency and/or entity [other than []].

Section 8.18. **No Material Omissions.** None of the representations and warranties in this Section omits any matter the omission of which makes any representations and warranties misleading in any material respect.

Section 8.19. **Termination Event.** No Termination Event has occurred and is continuing.

Section 8.20. **USAID Reliance.** The Guaranteed Party acknowledges that it makes these representations and warranties with the intention of inducing USAID to enter into this Agreement and that USAID

enters into this Agreement on the basis of, and in full reliance on, each of such representations and warranties.

ARTICLE IX

Reporting and Records Requirements

Section 9.01. **Semi-Annual Portfolio Reporting**. No later than thirty (30) days after the end of each Guarantee Reporting Period, the Guaranteed Party shall provide to USAID the “Qualifying Loan Schedule” through CMS in effect on the last day of such Guarantee Reporting Period.

Section 9.02. **Annual Financial Reporting**. The Guaranteed Party shall prepare annual audited financial statements in accordance with [accounting standards generally recognized in _____], which shall be audited by a firm of independent public auditors acceptable to USAID, and shall submit such audited financial statements to USAID no later than ninety (90) days after the end of each of the Guaranteed Party’s fiscal years through the term of this Agreement.

Section 9.03 **Borrower Documents**. At USAID’s request, the Guaranteed Party shall provide to USAID copies of all documents and reports provided by a Qualified Borrower to the Guaranteed Party under the Qualifying Loan.

Section 9.04. **Other Reporting**. USAID reserves the right to carry out (at its own expense), or to have carried out, such additional audits, financial reviews, or evaluations as it considers appropriate in view of its status as guarantor, including audit reports on Qualifying Borrowers under Qualifying Loans. Should USAID request an audit report on any such party, the Guaranteed Party agrees that it shall use all reasonable means to require and obtain such reports from that party.

Section 9.05. **Failure to Provide Required Reports**. Should the Guaranteed Party fail to provide any reports required by the Agreement to USAID when due, no additional Qualifying Loans shall be placed under the coverage of the Guarantee and USAID may defer payment of any claims until it receives such documentation in form satisfactory to USAID or terminate the Guarantee pursuant to Section 11.01(a).

Section 9.06. **Books and Records**. The Guaranteed Party shall:

(a) Maintain or cause to be maintained, in accordance with [accounting standards generally recognized in _____] consistently applied, books and records relating to each Qualifying Loan covered by the Agreement, which are adequate to show compliance with the terms of the Agreement. Such books and records will be maintained with respect to each Qualifying Loan, except as USAID may otherwise agree in writing, for a period of three (3) years after the Final Date for Submitting Claims with respect to such Qualifying Loan in accordance with Section 6.03.

(b) Afford authorized representatives of USAID the opportunity at all reasonable business hours to inspect such books, records and other documents and files relating to the Agreement and the Qualifying Loans covered by the Agreement.

(c) Promptly make available such other information and records relevant to the Agreement and the Qualifying Loans covered by the Agreement as USAID may reasonably request, including onsite inspections.

ARTICLE X

Covenants

Section 10.01. **Existence; Conduct of Business.** The Guaranteed Party shall maintain its [corporate] existence, comply with its organizational documents and qualify and remain qualified to do business in [insert country].

Section 10.02. **Future Disclosure.** The Guaranteed Party shall inform USAID in a timely manner of any facts and circumstances of which it has actual knowledge that arise after the date of the Agreement and materially affect the Agreement or the discharge of obligations under the Agreement, or the truth and accuracy of any of the representations made in this Article X.

Section 10.03. **Approvals; Applicable Law.** The Guaranteed Party shall obtain in a timely manner and maintain in force all approvals that are necessary for it to carry out its obligations under the Qualifying Loan or this Agreement and shall comply in all material respects with Applicable Law the failure to comply with which could, or is likely to have a Material Adverse Effect.

Section 10.04. **Change of Control; Non-Sovereign Enterprise.** The Guaranteed Party acknowledges that USAID is entering into the Agreement partly because it considers the Guaranteed Party to be a good risk-sharing partner. To ensure that the Guaranteed Party remains a good risk-sharing partner, there shall be no Change of Control with respect to the Guaranteed Party without prior written approval by USAID; provided, however, that the Guaranteed Party has the option to terminate this Agreement with thirty (30) days prior written notice to USAID in the event it does not want to seek such approval. [The Guaranteed Party further acknowledges that USAID is entering into the Agreement to encourage private sector financing in [the Borrower's Country] and consequently, the Guaranteed Party shall remain a private, Non-Sovereign Enterprise, with no less than eighty percent (80%) of its equity held by the private sector.]

Section 10.05. **Material Adverse Change.** The Guaranteed Party shall promptly notify USAID of any of the following (each, a “Material Adverse Change”):

- (a) a material change in the Guaranteed Party's lending policies;
- (b) increases in non-performing loans (NPLs) by greater than fifty percent (50%) from the level of NPLs reflected in the most recent [audited] financial statements; or
- (c) reductions in capital adequacy to a level below what is required by the Central Bank in [insert country];
- (d) a change in Applicable Law that has a Material Adverse Effect.

Section 10.06 **Pari Passu.** The Guaranteed Party shall ensure that the payment obligations of all Qualifying Loans covered under this Agreement will at all times constitute the direct, general and unconditional obligations of the Qualifying Borrower and rank in all respects at least *pari passu* in priority of payment and in right of security with the payment obligations of all other unsecured and unsubordinated debt of such Qualifying Borrower. No Qualifying Loan guaranteed hereunder shall at

any time be subordinated to another debt contracted by a Qualifying Borrower or to any other claims against a Qualifying Borrower in case of a default under the Qualifying Loan.

Section 10.07. **USG Transactions**. The Guaranteed Party shall notify USAID of any guarantees and/or other financing agreements that the Guaranteed Party currently has with any other U.S. government agencies and/or entities. The Guaranteed Party shall not enter into any such transactions during the term of this Agreement without prior written approval from USAID.

Section 10.08. **Arm's Length Transactions**. The Guaranteed Party shall not enter into any transaction with a Qualified Borrower except in the ordinary course of business on the basis of arm's length arrangements.

Section 10.09. **Utilization**. The Guaranteed Party shall consult with USAID concerning any matters that interfere with the adequate utilization of the Agreement.

Section 10.10. **Purpose of Qualifying Loan**. If the Guaranteed Party learns that a Qualifying Borrower is not using the proceeds of its Qualifying Loan for the purpose stated in Part A of the Guarantee Term Sheet, the Guaranteed Party shall promptly inform USAID.

Section 10.11 **Terrorism**. The Guaranteed Party shall not knowingly provide material support or resources to any individual or entity that commits, attempts to commit, advocates, facilitates, or participates in terrorist acts, or has committed, attempted to commit, facilitated, or participated in terrorist acts. The Guaranteed Party shall take all reasonable steps to ensure that none of the loans it seeks to place under coverage of the Guarantee will be made to any such individual or entity, including considering all information about the prospective borrower of which it is aware and all public information that is reasonably available to it or of which it should be aware.

Section 10.12. **Loan Management**. The Guaranteed Party shall manage all Qualifying Loans in the same manner as it manages non-guaranteed loans on its books.

ARTICLE XI

Termination Events

Section 11.01 **Termination Events**. It shall be a "**Termination Event**" if USAID determines, in its reasonable discretion that:

- (a) the Guaranteed Party has committed a material breach of the Agreement;
- (b) The Guaranteed Party has failed to pay when due the Guarantee Fees in accordance with Section 4.02 (*Failure to Pay Guarantee Fees*);
- (c) The Guaranteed Party has failed to reimburse USAID in accordance with Section 6.02 (*Reimbursement of USAID*);
- (d) the Guaranteed Party has engaged in gross negligence, fraud or misrepresentation which, in the case solely of a misrepresentation, could be reasonably expected to result in an adverse effect in any material respect on USAID;

- (e) a Guaranteed Party Insolvency Event has occurred;
- (f) any one or more events, conditions or circumstances occurs or exists that, alone or taken together, results in or could reasonably be expected to result in a Material Adverse Change;
- (g) the Guaranteed Party has not made any Qualifying Loans on or prior to [INSERT DATE];
- (h) [the Guaranteed Party or any of the Key Individuals is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking as defined in Part 140 of Title 22 of the United States Code of Federal Regulations;] or
- (i) A Change of Control has occurred without USAID's prior written consent.

ARTICLE XII

Termination and Reduction

Section 12.01. **Term.** Unless terminated at an earlier date by USAID or the Guaranteed Party in accordance with the terms and conditions herein, the Agreement shall terminate on the Coverage Expiration Date, provided that such termination on the Coverage Expiration Date will not (i) relieve USAID of its obligations under the Agreement with respect to claims submitted prior to the Final Date for Submitting Claims or (ii) relieve the Guaranteed Party of its obligations hereunder, under Section 6.02 (*Reimbursement of USAID*) and Section 6.03 (*Certificate of Post-Claim Recoveries*).

Section 12.02. **Termination or Suspension by USAID for Cause.** USAID may terminate or suspend the Agreement at any time by written notice to the Guaranteed Party upon the occurrence of any Termination Event. Any termination or suspension by USAID pursuant to this Section 12.02 shall be based on USAID's opinion and discretion as to the severity and relevance of the alleged breach, and USAID may elect either to continue or to cancel coverage of any then-outstanding Qualifying Loans; provided, however, that, termination or suspension of the Agreement pursuant to Sections 11.01(e), (f) or (i) shall not affect the validity or enforceability of the Agreement on the portions of the Qualifying Loans that have been disbursed prior to such Termination Event.

Section 12.03. **Termination or Suspension for Convenience.** USAID may terminate or suspend the Agreement at its convenience at any time for any reason by written notice to the Guaranteed Party. It is understood that USAID does not expect to exercise this right unless the continuation of the Agreement would not be in the foreign policy interests of the United States or would be in violation of Applicable Law. Any termination or suspension for convenience by USAID pursuant to this Section 12.03 shall not affect the validity or enforceability of the Agreement on the portions of the Qualifying Loans that have been disbursed prior to the date of such suspension or termination; provided, however, that USAID shall in no event be required to pay a claim to the extent that it is unlawful in any applicable jurisdiction, or contrary to any law, regulation or official sanction to which USAID may from time to time be subject.

Section 12.04. **Survival of Certain Obligations.** Notwithstanding any other provision of the Agreement, the obligations of the Guaranteed Party with respect to any unpaid payment obligation under this Agreement, including all outstanding fees, incurred prior to the date of any termination or suspension of the Agreement, and the obligations of the Guaranteed Party with respect to Sections 5.06

(Repayment), 6.02 (Reimbursement of USAID) and Section 6.03 (Certificate of Post-Claim Recoveries) shall survive any termination or suspension of the Agreement.

ARTICLE XIII

Miscellaneous

Section 13.01. English Language.

- (a) The Agreement is prepared in [English only] [both English and [insert other language]]. In the event of ambiguity or conflict between the two versions, the English version shall control].
- (b) All documents to be provided or communications to be given or made under this Agreement shall be in the English language, unless otherwise agreed by USAID in writing.
- (c) To the extent that the original version of any document to be provided, or communication to be given or made, under this Agreement is in a language other than English, that document or communication shall (unless otherwise agreed to in writing by USAID) be accompanied, at the cost and expense of the Guaranteed Party or the Qualifying Borrower, by an English translation certified by an authorized representative acceptable to USAID to be a true and correct translation of the original.

Section 13.02. Notices and Communications. Any notices, requests or other communication submitted by any Party to the other Party shall be in writing and shall be deemed to have been given when sent to the receiving Party at the address indicated in the Guarantee Term Sheet.

Section 13.03. Payments. All payments by either Party shall be made in accordance with the Payment Instructions indicated in the Guarantee Term Sheet.

Section 13.04. Exchange Rates.

- (j) With respect to calculations of the Maximum Authorized Portfolio Amount, calculations of the Maximum Cumulative Disbursements Amount, or any other calculations under the Agreement, Local Currency /U.S. Dollar equivalencies shall be determined by using the Reporting Exchange Rate.
- (ii) With respect to the payment of claims and calculations regarding the Guarantee Ceiling, Local Currency /U.S. Dollar equivalencies shall be determined by using the [Claim Payment Exchange Rate][Reporting Exchange Rate].
- (iii) With respect to Guarantee Fees, Local Currency /U.S. Dollar equivalencies shall be determined by using the [Reporting Exchange Rate]/ [Claim Payment Exchange Rate].

Section 13.05. Full Faith and Credit. The guarantee obligations of USAID under the Agreement for the full payment and performance of the obligations under the Guarantee constitute full faith and credit obligations of the United States of America.

Section 13.06. **Taxation.** The Guaranteed Party agrees to pay all taxes imposed by any government authority in [local country], including any interest and penalties, if any, on or with respect to the Agreement, and hereby indemnifies USAID against any such taxes that may be imposed upon USAID in connection therewith. Payments of all amounts due to USAID under the Agreement shall be made free and clear of and without reduction for such taxes or similar charges or any regulatory fees, wire processing fees, or other costs incurred in [local country] in connection with such payments.

Section 13.07. **Information and Publicity.** The Parties agree to cooperate, from time to time, in exchanging information about the Agreement and its implementation and in giving appropriate publicity to the Agreement as a program to which USAID has contributed. The Guaranteed Party acknowledges that USAID may share information regarding this Agreement within the U.S. Government.

Section 13.08. **Dispute Resolution.** The Agreement shall be governed by and construed in accordance with the laws of the State of New York of the United States of America. The parties agree to use their best efforts to resolve disputes arising under the Agreement through amicable negotiations. Any disputes, controversies or claims arising between the parties under the Agreement that cannot be resolved in negotiations between the parties shall be finally settled in accordance with the Rules of Arbitration of the International Chamber of Commerce (unless otherwise agreed upon by the parties) in force at the date of request for arbitration, which rules are deemed incorporated by reference into this clause. Such arbitration shall take place in [Washington, DC] (unless otherwise agreed upon by the parties), shall be conducted in the English language, and shall be the sole and exclusive forum for the resolution of disputes, and the decision of the arbitrator(s) shall be final and binding on the parties. Judgment on the award may be entered in any court having jurisdiction thereof. Each Party hereby irrevocably consents to the service of process in any action or proceeding under the Agreement by mailing copies thereof to the Party's address set forth in the Guarantee Term Sheet, by recognized express courier (such as Federal Express or DHL).

In any arbitration arising under this Agreement, either Party shall be permitted to include, by consolidation, joinder or any other manner, any person or entity not a party to this Agreement (i) such person or entity is substantially involved in a common question of fact or law, (ii) the presence of such person or entity is required if complete relief is to be accorded in the arbitration, and (iii) such person or entity has consented to such inclusion.

Section 13.09. **Conflicts.** In the event of any conflict, inconsistency or ambiguity between the terms and conditions of the Guarantee Term Sheet and the terms and conditions of the Standard Terms and Conditions, the terms and conditions of these Standard Terms and Conditions shall control.

Section 13.10. **Entire Agreement.** The Agreement constitutes the entire agreement between the Parties concerning the subject matter of the Agreement and supersedes any prior understanding or written or oral agreement.

Section 13.11. **Amendment.** Any amendment, or waiver of, or any consent given under, any provision of the Agreement shall be in writing and, in the case of any amendment, shall be signed by both Parties.

Section 13.12. **Counterparts.** The Agreement may be signed in separate counterparts each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

Section 13.13 **Saving of Rights.** (a) The rights and remedies of USAID shall not be prejudiced by any investigation by or on behalf of USAID into the affairs of the Guaranteed Party or a Qualifying Borrower.

(b) No waiver by USAID in connection with any conditions under this Agreement shall impair any right, power or remedy of USAID with respect to any other condition under this Agreement.

(c) In the event that any of the terms or provisions of this Agreement are declared invalid or unenforceable in any respect or to any extent in any jurisdiction, the remaining terms and provisions that are not effected thereby shall remain in full force and effect.

Section 13.14. **Successors and Assignees.** This Agreement binds and benefits the respective successors and assignees of the parties; provided, however, the Guaranteed Party may not assign or delegate any of its rights or obligations under this Agreement without the prior written consent of USAID.

ARTICLE XIV

Definitions

Section 14.01. **Terms.** Throughout the Agreement, terms, when capitalized, shall have the meaning assigned to them as follows:

“**Affiliate**” shall mean, with respect to any party, (i) if such party is an individual, any immediate family member of such party, any person that resides in the same home of such party, any person that is employed by such party or any person that receives substantial monetary or other economic assistance from such party, and (ii) in all other cases, any legal entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or under common control with, such party.

“**Applicable Law**” shall mean all statutes, laws, treaties, rules, regulations, ordinances, approvals, codes, orders and other governmental determinations, authorizations or restrictions.

“**Certification of Post-Claim Recoveries**” shall mean the certification in the form set out in Appendix 4.

“**Change of Control**” shall mean any of the following, in each case, with respect to the Guaranteed Party:

- (a) an acquisition by or merger with another legal entity or person;
- (b) a majority of the equity interests in the Guaranteed Party is sold to or otherwise acquired by any legal entity or person that does not own at least ten percent (10%) of the equity interests in the Guaranteed Party as of the date of the Agreement, without prior written approval by USAID;
- (c) there is a sale of assets, individually or in the aggregate, or other transactions that results in asset reduction of greater than thirty percent (30%) of total assets immediately prior to such sales or transactions; or
- (d) a change relating to how the management and policies of the company are directed (including the composition of the board of directors) that is not provided for in the organizational documents of the Guaranteed Party or would require amendment or replacement of the organizational documents of the Guaranteed Party. For the avoidance of doubt, this does not include changes to the membership of the board of directors done through the ordinary course of business.

“Claim Payment Exchange Rate” shall mean the rate of exchange for the conversion of U.S. Dollars to any other currency specified in the Guarantee Term Sheet, as determined by reference to the US Embassy daily exchange rate, which shall be confirmed by USAID/[Mission] on the day of any applicable payment, or such other exchange rate as determined by USAID.

“CMS” shall mean USAID’s Credit Management System.

“Coverage Expiration Date” shall have the meaning ascribed to that term in Section 7 of the Guarantee Term Sheet.

“Currency of Guarantee Payment” shall have the meaning ascribed to that term in Section 11 of the Guarantee Term Sheet.

“Currency of Guarantee Fee Payment” shall have the meaning ascribed to that term in Section 18 of the Guarantee Term Sheet.

“days” shall mean calendar days, unless otherwise stated in the Agreement.

“Defaulting Borrower” shall have the meaning ascribed to that term in Section 5.01(a) of the Standard Terms and Conditions.

“Final Date for Placing Qualifying Loans Under Coverage” shall have the meaning ascribed to that term in Section 6 of the Guarantee Term Sheet.

“Financial Agent” shall mean Midland Loan Services., or such other financial agent as designated by USAID in a written notice to the Guaranteed Party.

“Guarantee” shall have the meaning ascribed to that term in Part A of the Guarantee Term Sheet.

“Guarantee Ceiling” shall have the meaning ascribed to that term in Section 5 of the Guarantee Term Sheet.

“Guarantee Fees” shall have the meaning ascribed to that term in Section 4.01 of the Standard Terms and Conditions.

“Guarantee Percentage” shall have the meaning ascribed to that term in Section 4 of the Guarantee Term Sheet.

“Guarantee Reporting Periods” shall have the meaning ascribed to that term in Section 12 of the Guarantee Term Sheet.

“Guarantee Term Sheet” shall mean the guarantee term sheet set forth as Attachment 1 to the Agreement.

“Guaranteed Party Insolvency Event” shall mean (i) the Guaranteed Party instituting a voluntary case concerning itself, or undertaking any actions to form an arrangement with creditors for the purpose of paying its past due debts or seeking its liquidation or reorganization or moratorium of its payments; (ii) the Guaranteed Party’s inability to pay debts as they become due; (iii) the Guaranteed Party’s applying for or consent to the appointment of any liquidator, receiver, trustee or administrator for all or a substantial part of its business, or the appointment of a liquidator, receiver, trustee for the Guaranteed Party which continues undismissed, undischarged or unstayed for a period of thirty (30) days; (iv) the commencement of an involuntary case against the Guaranteed Party under bankruptcy law which is not dismissed within sixty (60) days after commencement

of such case; or (v) any other event occurs which, under Applicable Law, would have an effect analogous to any of those events listed in (i) through (iv) of this definition.

[**“Key Individuals”** shall mean any officer, director, owner, partner, agent, employee, or other person with primary management or supervisory responsibilities and affiliates that have decision making authority with respect to this Agreement and/or the transactions contemplated hereunder.]

“Loan” shall mean, unless otherwise specifies in the Guarantee Term Sheet, any type of commercial loan, excluding, however, any letter of credit, credit card debt, line of credit, overdraft or other forms of revolving debt

“Local Currency” shall mean [insert name of local currency].

“Material Adverse Change” shall have the meaning ascribed to that term in Section 10.05 of the Standard Terms and Conditions.

“Material Adverse Effect” shall mean a material adverse effect that has or could reasonably be expected to have a negative impact on (a) the condition, financial or otherwise, operations, properties or business of the Guaranteed Party or (b) the ability of the Guaranteed Party to perform its obligations under the Qualifying Loan or this Agreement.

“Maximum Authorized Portfolio Amount” shall have the meaning ascribed to that term in Section 1 of the Guarantee Term Sheet.

“Maximum Cumulative Disbursements Amount” shall have the meaning ascribed to that term in Section 2 of the Guarantee Term Sheet.

“Maximum Cumulative Principal Amount of Qualifying Loans Per Qualifying Borrower” shall have the meaning ascribed to that term in Section 3 of the Guarantee Term Sheet.

“Non-Sovereign Enterprise” shall mean any business or enterprise that is majority-owned by citizens or permanent residents of [country] and in which the [country] government does not own a greater than [20%] interest.

“Notice of Due Payment” shall mean a notice sent to the Guaranteed Party and specifying the amount of Utilization Fees that are then due and payable under the Agreement.

“Origination Fee” shall have the meaning ascribed to that term in Section 17(a) of the Guarantee Term Sheet.

“Other Recovered Funds” shall have the meaning ascribed to that term in Section 6.02 of the Standard Terms and Conditions.

“Qualifying Borrower” shall have the meaning ascribed to that term in Section 15 of the Guarantee Term Sheet.

“Qualifying Loan” shall have the meaning ascribed to that term in Section 14 of the Guarantee Term Sheet.

“Qualifying Loan Maturity Date” shall have the meaning ascribed to that term in Section 10 of the Guarantee Term Sheet.

[**“Qualifying Projects”** shall have the meaning ascribed to that term in Section 16 of the Guarantee Term Sheet.]

“Reasonable Collection Efforts” shall mean (i) reasonable investigation of the likelihood of repayment before declaring a default; (ii) sending notices to the Qualifying Borrower and any other entity that may be liable on the Qualifying Loan pursuant to agreement with the Borrower or by operation of law; (iii) reasonably pursuing, collecting and accepting payments to cure any payment defaults by the Qualifying Borrower; (iv) exercising rights of collateral (which, for the avoidance of doubt, shall include parent guarantees from the parent company with respect to the Qualifying Borrower); (v) exercising setoff rights or other rights to debit an account of the Qualifying Borrower; and (vi) any other action that is standard and expected as part of the repayment collection process. “Reasonable collection efforts” is not required to include the completion of legal proceedings against a Qualifying Borrower.

“Recovered Funds” shall have the meaning ascribed to that term in Section 6.02 of the Standard Terms and Conditions.

“Reporting Exchange Rate” shall mean the rate of exchange for conversion of the Local Currency to U.S. Dollars or the conversion of U.S. Dollars to Local Currency, as used by the U.S. Treasury on a quarterly basis and in effect at the time any such conversion is calculated. As of the date of the Agreement, such rates are published at https://www.fiscal.treasury.gov/fsreports/rpt/treasRptRateExch/treasRptRateExch_home.htm.

“Standard Terms and Conditions” shall mean these standard terms and conditions set forth as this Attachment 2 to the Agreement.

“Termination Event” shall have the meaning ascribed to that term in Section 11.01 of the Standard Terms and Conditions.

“Total Recovered Funds” shall have the meaning ascribed to that term in Section 6.02 of the Standard Terms and Conditions.

“Utilization Fee” shall have the meaning ascribed to that term in Section 17(b) of the Guarantee Term Sheet.

APPENDIX 1

REQUEST FOR PAYMENT OF CLAIM

Pursuant to Section 5.02 of Loan Portfolio Guarantee Agreement No. _____ (the "Agreement") entered into between USAID and _____ (the "Guaranteed Party") on [date], we hereby request that you make the following payment with respect to the following loan (the "Loan"). Terms used herein shall have the meanings ascribed to them in the Agreement.

I. Loan Description: Indicate the following:

- (a) Qualifying Borrower:
- (b) Transaction Report Number:
- (c) Purpose of Qualifying Loan: (e) Effective Date (mm/dd/yyyy):
- (d) Date of Final Maturity (mm/dd/yyyy):
- (e) Total Principal Amount:
- (f) Disbursement date(s) (if multiple disbursements, indicate amount disbursed on each date) (mm/dd/yyyy):
- (g) Annual Interest rate:
- (h) Currency:
- (i) Other lenders:
- (j) Other guarantors:
- (k) Other loans to the same borrower which are covered under the Agreement (indicate applicable transaction report number, effective date, maturity date, principal amount, interest rate, and if those loans are also in default):

II. Claim Terms.

- (a) Reason for Default (provide a detailed explanation of the circumstances of the default, including the reason the Borrower defaulted):
- (b) Date(s) of default by the Qualifying Borrower (mm/dd/yyyy):
- (c) Date(s) of final demand by the Guaranteed Party on the Qualifying Borrower (mm/dd/yyyy):
- (d) Description of the collection efforts made pursuant to Section 5.01(b) of the Agreement and the total amount collected to date (net of reasonable expenses actually incurred in such collection efforts):
- (e) Amount of defaulted principal payment (excluding any defaulted interest payments):
- (f) Amount of Claim (default amount(s) less recoveries, multiplied by the Guarantee Percentage expressed as a decimal or fraction):
- (g) Other loans (guaranteed and unguaranteed) to the Qualifying Borrower that are in default (indicate effective date, maturity date, principal amount, and interest rate):

III. Payment Instructions. The Guaranteed Party requests that payment be made by the method and to the account described below:

[Insert]

IV. Claim Certification. The Guaranteed Party hereby certifies that it has complied with the requirements of the Agreement (including the payment of all Guarantee Fees arising under Section 4.01) and will comply with the requirements of Article VI of the Agreement. The Guaranteed Party further certifies that:

(a) The Qualifying Borrower has failed to repay the above-stated principal amount due on the Qualifying Loan;

(b) The Qualifying Borrower has failed to meet the Guaranteed Party's written demand for repayment of the principal amount due on the Qualifying Loan;

(c) The Guaranteed Party has diligently pursued Reasonable Collection Efforts against the Qualifying Borrower (and any other entity that may be liable on the Qualifying Loan), in accordance with Applicable Law and standard banking practice in [country]; and

(d) After such collection activities, the Guaranteed Party has (1) written off the entire outstanding balance (including principal and interest) of the Qualifying Loan as a bad debt expense, or (2) it (A) is unable, because of a legal impediment or significant impracticality, to take the action described in (1) above, and (B) has established a specific provision of funds (which is evidenced on its balance sheet or income statement) for possible loan losses associated with the default by the Defaulting Borrower, and the amount of such provision equals or exceeds 20% of the amount of defaulted principal.

By:_____

Name:_____

Title:_____

Date:_____

APPENDIX 2

Part 1: Reporting Qualifying Loans in Credit Management System: Transaction Reports

A Transaction Report is created by the Guaranteed Party each time that a loan is placed under guarantee coverage. It contains information that is pertinent to the particular loan in question. Only one Transaction Report is created per loan, not per disbursement. If there are multiple disbursements, this information will be reflected in the Qualifying Loan Schedule. Transaction Reports can be created at any time, although USAID recommends that they be created at the time of loan disbursement.

The Guaranteed Party is advised to carefully review the data recorded in each Transaction Report to ensure that it is correct before submitting the information to USAID. At the time of submission, the Guaranteed Party will certify that the Loan is a Qualifying Loan as defined in the Agreement and that the information submitted is true and correct in all respects. Once the Transaction Report is submitted, only USAID is permitted to make any changes.

The screenshot shows the 'Create Transaction Report' form in the USAID Credit Management System. The form is titled 'Create Transaction Report' and includes the following fields:

- Transaction Report Number:** Set Upon Submission
- Credit Agreement Guarantee Number:** 497-DCA-10-004
- Country and Currency:** Indonesia - INDONESIA - RUPIAH (with a note: 'If more than one currency is available, select from the drop-down menu.')
- Credit Type:** Term Loan
- Exchange Rate:** Set Upon Submission
- Borrower Name:** (empty text field)
- City/Town:** (empty text field with a note: 'Please spell out shortened names such as Fort, Saint, etc.... Also please note that some city names have multiple spellings and may contain accents or dashes (e.g. Port-au-Prince).')
- State/Province/Region:** (empty text field)
- Business/Sector:** Agriculture (with a note: 'Select the type of business the borrower operates.')
- Additional Information:** (empty text field)
- Purpose of Loan:** (empty text field with a note: 'Please be specific... e.g., "working capital for new inventory"')
- Transaction Amount:** 0.00

The form is displayed in a web browser window with the URL <https://admin.cms.usaid.org/transactionReport/create?creditAgreementId=508>. The browser's address bar and the CMS navigation menu are visible at the top. The Windows taskbar is visible at the bottom of the screen.

The information contained in CMS are trade secrets and commercial or financial information which are privileged and confidential and exempt from disclosure under the Freedom of Information Act, 5 U.S.C. Sec. 552. Furthermore, this information is prohibited from disclosure under the Trade Secrets Act, 18 U.S.C. Sec 1905.

APPENDIX 2 cont.

Part 2: Reporting Qualified Loans in Credit Management System (Loan Schedule Screen Shot)

At the end of each six-month guarantee or reporting period, the Guaranteed Party creates a new Qualifying Loan Schedule in CMS and update loan activity for that period. USAID will use its best efforts to notify the Guaranteed Party as soon as the Reporting Exchange Rate for that period has been updated in CMS. CMS will automatically incorporate any new Qualifying Borrowers for whom Transaction Reports were created during the last reporting period. The ending loan balance for the previous period will become the opening balance for the current period. It is up to the Guaranteed Party to update the aggregate Disbursements, aggregate Payments, Arrears (Days) and Removed Coverage Date columns to reflect loan activity that occurred during the current reporting period. CMS will automatically calculate the ending balance. Updated Qualifying Loan Schedules are due no later than thirty (30) days following the last day of the reporting period.

The Guaranteed Party is advised to carefully review the data recorded in the Qualifying Loan Schedule to ensure that it is correct before submitting this information to USAID. At the time of submission, the Guaranteed Party will certify that the loans are Qualifying Loans as defined in the Agreement and that the information submitted is true and correct. Once the Qualifying Loan Schedule has been submitted to USAID, only USAID can make changes.

USAID Credit Management System (CMS) Loan Schedule Summary screen. The screen displays a table of loan items for the Philippines, grouped by country and currency (PESO). The table includes columns for Name, Type, Start, Amount, Open, Disburse, Payment, End, Arrears (Days), GTE %, and Removed from Coverage Date. The data is sorted by Date. The screen also displays summary statistics at the bottom, including Ending Balance Subtotal, Exchange Rate, and Ending Balance Subtotal in USD.

NAME	TYPE	START	AMOUNT	OPEN	DISBURSE	PAYMENT	END	ARREARS (DAYS)	GTE %	REMOVED FROM COVERAGE DATE
Panay Cold Chain Services Corporation	TL	2014/07/21	12,393,166.13	10552131.79	0.00	0.00	10,552,131.79	0	50.00%	
International Contract Manufacturing Corporation	TL	2014/08/19	7,039,162.00	6972481.18	0.00	0.00	6,972,481.18	0	50.00%	
International Contract Manufacturing Corporation	TL	2014/08/19	25,880,418.55	25577102.34	0.00	0.00	25,577,102.34	0	50.00%	
International Contract Manufacturing Corporation	TL	2014/08/19	25,880,418.55	25476502.33	0.00	0.00	25,476,502.33	0	50.00%	
CYS AQ AG ENTERPRISES, INC.	TL	2014/11/05	19,292,700.00	17409410.39	0.00	3442133.70	13,967,276.69	0	50.00%	
Panay Cold Chain Services Corporation	TL	2014/11/10	8,000,000.00	7565548.77	0.00	790439.39	6,775,109.38	0	50.00%	
Orion St. Michael Hospital, Inc.	TL	2015/01/25	13,584,000.00	13584000.00	0.00	1259068.44	12,324,931.56	0	50.00%	

Ending Balance Subtotal: 101,645,535.27 (PHILIPPINES - PESO)
Exchange Rate: 46.680
Ending Balance Subtotal: \$2,177,496.47 (USD)

The information contained in CMS are trade secrets and commercial or financial information which are privileged and confidential and exempt from disclosure under the Freedom of Information Act, 5 U.S.C. Sec. 552. Furthermore, this information is prohibited from disclosure under the Trade Secrets Act, 18 U.S.C. Sec 1905.

APPENDIX 3
CERTIFICATION OF POST-CLAIM RECOVERIES

Attention:

Date:

Ref: Loan Portfolio Guarantee Agreement No. DCA – [insert guarantee no.]

Capitalized terms used but not defined herein shall have the meanings ascribed to that term in the loan portfolio guarantee agreement No. [insert guarantee no.] (the “Agreement”) dated _____, between the United States Agency for International Development (USAID) and [insert name of the Guaranteed Party](the “Guaranteed Party”). The Guaranteed Party hereby certifies that it was paid [insert amounts] by USAID in connection with claims submitted under the Agreement.

The Guaranteed Party further certifies that, as of the date hereof, it has received [insert amount] in Recovered Funds (as defined in Section 6.02 of the Agreement). Such amount is net of [] in reasonable collection costs incurred by the Guaranteed Party in pursuing such recoveries. [Insert brief description of collection efforts and related costs incurred].

The Guaranteed Party acknowledges that USAID may refuse to honor any future claims under the Agreement if the specified amount of Recovered Funds above is not accurate.

Guaranteed Party

By (Signature)

Name (please print)

Title (please print)

Date

[APPENDIX 4]

**KEY INDIVIDUAL CERTIFICATION
NARCOTICS OFFENSES AND DRUG TRAFFICKING**

I hereby certify that within the last ten years:

1. I have not been convicted of a violation of, or a conspiracy to violate, any law or regulation of the United States or any other country concerning narcotic or psychotropic drugs or other controlled substances.
2. I am not and have not been an illicit trafficker in any such drug or controlled substance.
3. I am not and have not been a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking in any such drug or substance.

Signature: _____
Date: _____
Name: _____
Organization: _____
Position: _____
Address: _____
National ID#: _____
Date of Birth: _____

NOTICE:

1. You are required to sign this Certification under the provisions of 22 CFR Part 140, Prohibition on Assistance to Drug Traffickers. These regulations were issued by the Department of State and require that certain key individuals of organizations must sign this Certification.
2. If you make a false Certification you are subject to U.S. criminal prosecution under 18 U.S.C. 1001.]

APPENDIX 5 (a)

[LETTERHEAD OF GUARANTEED PARTY]

CERTIFICATE OF AUTHORITY

[NAME OF GUARANTEED PARTY/ENTITY]

CERTIFICATE OF AUTHORITY

The undersigned, [Insert name and title of the Officer] of [Insert Name, Address and Place Incorporated of the Guaranteed Party] (the “Guaranteed Party”) is delivering this Certificate of Authority pursuant to Section [7.01(i)(b)] of the loan portfolio guarantee agreement No:_____ dated [____, 20__](the “Agreement”) between the United States Agency for International Development (“USAID”) and the Guaranteed Party. I, [Insert Name of Officer], DO HEREBY CERTIFY that [Insert Name of Officer Signing the Agreement] has the authority to sign the Agreement and any appendices thereto on behalf of the Guaranteed Party.

IN WITNESS WHEREOF, the undersigned has executed this certificate on the [DATE].

[INSERT NAME OF GUARANTEED PARTY]

By:_____
Name:
Title:

Instructions (delete before signing): This Certificate should be dated the date of the Guarantee Agreement and signed simultaneously. It should be signed by an individual that has the capacity to confirm the authority of the entity signing the Guarantee Agreement. Accordingly, the signatory to this Certificate and the Guarantee Agreement are different.

APPENDIX 5 (b)

[LETTERHEAD OF GUARANTEED PARTY]

OFFICER’S CERTIFICATE

Subject: USAID Guarantee No. DCA – []

The undersigned, **[insert name and title of the Officer and name of the Guaranteed Party]** (the “Guaranteed Party”) is delivering this certificate pursuant to Section [7.01(i)(c)] of the loan portfolio guarantee agreement dated [____, 200_](the “Agreement”) between the United States Agency for International Development (“USAID”) and the Guaranteed Party.

I, [Insert Name of Officer], as [Insert Title and Name of Guaranteed Party], DO HEREBY CERTIFY that all representations made by the Guaranteed Party in Section 8 of the Agreement are true and complete as of the date of the Agreement and as of the date hereof.

[INSERT NAME OF GUARANTEED PARTY]

By (Signature)

Name (please print)

Title (please print)

Date

Instructions (delete before signing): This Certificate should be dated the date of the Guarantee Agreement and signed simultaneously. It should be signed by an individual that is signing the Guarantee Agreement.

APPENDIX 5 (c)
LEGAL OPINION

[LETTERHEAD OF LAW FIRM OR IN-HOUSE COUNSEL]

[INSERT ADDRESS OF USAID]

[DATE]

Subject: USAID Guarantee No. DCA – []

We have acted as counsel to [insert name of Guaranteed Party] (the “Guaranteed Party”) in connection with the agreement of guarantee (the “Guarantee Agreement”) dated [], 20__ between the United States Agency for International Development (“USAID”) and the Guaranteed Party. This opinion is being delivered to you at the request of the Guaranteed Party pursuant to [Section 7.01(ii)(a)] of the Guarantee Agreement. Terms used but not defined herein shall be given the meanings ascribed to them in the Guarantee Agreement.

In rendering the opinion below, we have examined executed copies of the Guarantee Agreement, such corporate and other records, agreements, or documents pertaining to the Guaranteed Party as we have deemed relevant and necessary as a basis for the opinions set forth below.

[Insert any assumptions]

Based on the foregoing, we are of the opinion that:

1. The Guaranteed Party is duly organized and validly existing where incorporated or chartered. The Guaranteed Party has full power, authority and legal right to carry out its business as currently conducted, to execute, deliver and perform the Guarantee Agreement and all other documents which the Guarantee Agreement contemplates will be executed by the Guaranteed Party and to carry out all the activities which the Guarantee Agreement contemplates will be carried out by the Guaranteed Party.
2. The execution, delivery and performance by the Guaranteed Party of the Guarantee Agreement have been duly authorized by all necessary actions of the Guaranteed Party, and the Guarantee Agreement constitutes a legal, valid and binding obligation of the Guaranteed Party enforceable in accordance with its terms.
3. Neither the entry into the Guarantee Agreement nor the compliance with its terms will conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default or require any consent under, any instrument or arrangement to which the Guaranteed Party is a party or by which it is bound, or violate any of the terms or provisions of its organizational documents, any judgment, decree, or order or any Applicable Law.
4. No approval, consent, registration, filing, agreement, certificate, permit, authority or exemption of any kind is required from any governmental authority in order for the Guaranteed Party to enter into the Guarantee Agreement and perform its duties thereunder.

[Insert any qualifications]

[Name and signature of law firm or lawyer providing the opinion and signature]

APPENDIX 5 (d)

[SAMPLE LETTER FROM USAID INDICATING CONDITIONS PRECEDENT HAVE BEEN SATISFIED]

Date: **[Insert Date]**

[insert name of officer of Guaranteed Party signatory]

[Insert title – e.g., general manager]

[Insert name of the guaranteed party]

[insert address]

Subject: **[insert country name]** Loan Portfolio Guarantee
Guarantee No. DCA-[**insert guarantee no. –xxx-DCA-xx-xxx**]
Satisfaction of Conditions Precedent

Dear **[insert name]**:

Reference is hereby made to the Loan Portfolio Guarantee Agreement [insert guarantee no.] (the “Agreement”), dated __, 20__, between the U.S. Agency for International Development (“USAID”) and [insert name of Guaranteed Party] (the “Guaranteed Party”). Capitalized terms used but not defined in this letter shall have the meanings ascribed to that term in the Agreement. Pursuant to Section 7.01 (*Conditions Precedent*) of the Agreement, USAID hereby notifies [insert name of Guaranteed Party] that it has received the materials and information referred to in Section 7.01 and they are in form and substance satisfactory to USAID. Therefore, subject to the terms and conditions of the Agreement, Qualifying Loans may now be placed under the coverage of the Guarantee.

Sincerely,

[insert name]
Mission Director
USAID/[insert Mission]

APPENDIX 6

Checklist for DCA Transactions and Fund Transfer Procedure

Control Stage	Process Description	Individual or Parties Responsible
1. Project Development	DCA project included in Mission Operational Plan as Implementing Mechanism	Mission Program Officer
2. Project Development	Initial Environmental Examination	Mission Technical DCA Lead
3. Project Development	Action Package approved by CRB and signed by CFO	CFO; Credit Review Board
4. Legal Agreement	RLO Clearance of Final Guarantee Agreement	Mission Technical DCA Lead; RLO; GC Attorney
5. Funds Availability and Control	Congressional Notification	Mission Technical DCA Lead; DCA Program Unit;
6. Funds Availability and Control	<p>Funds availability confirmed</p> <p>*Fiscal Year Budget funds have been made available to the Bureau and Missions</p> <p>*Mission notifies Bureau that they wish to transfer funds to DCA and that the funds are available to be removed from their Phoenix budget e.g., OYB Matrix, email correspondence, etc.</p> <p>*Mission or Bureau de-allows funds from the Mission Phoenix budget, notifies DCA Program Unit and F that the funds are available to be de-allotted from the Bureau budget</p> <p>* F de-allots the funds from the Bureau budget in Phoenix and notifies Funds Control (M/CFO/CAR./FCGL) that the funds are available for transfer</p>	Bureau DP; DCA Program Unit; F Credit Program Officer; M/ICFO fund accountant
7. Funds Availability and Control	Mission funds prepared (“rolled up”) for transfer, if necessary	Mission; Bureau DP; F Credit Program Officer; M/ICFO fund accountant
8. Funds Availability and Control	<p>OMB approves Apportionment of Mission funds for transfer into DCA Program Account (See ADS 634.3.3.2)</p> <p>*F, Operating Unit (OU), the Bureau budget office, E3/DCA Program Unit and Funds Control clear on draft apportionment letter to OMB which describes the transaction and requests transfer/apportionment of the funds</p>	M/ICFO fund accountant; F Credit Program Officer
9. Funds Availability and Control	Process of Transfer of Funds (Funds Control processes the transfer of the funds between the originating account (DA, ESF, GHP, AEECA, etc.) into the DCA Program Account (LA)	M/ICFO fund accountant E3/DC
10. Funds	DCA Funds are allotted to the Bureau	F Credit

Availability and Control	(See ADS 634.3.3.3) *Funds Control notifies F that the funds are available for allotment in the DCA program account. *F allots the funds in the DCA program account to the Bureau	Program Officer
11. Funds Availability and Control	DCA Program Unit advises the respective Mission/OU program office where the DCA funds and how much are to be allowed to the Mission/OU DCA Funds are allowed/sub-allowed/distributed to Mission (See ADS 634.3.3.4) *Bureau makes the funds available to the Mission	DCA Program Unit; Bureau DP
12. Funds Availability and Control	<u>Commitment for guarantee processed in Phoenix (must be completed before guarantee agreement or an additional subsidy cost modification amendment is signed.)</u> (See ADS 634.3.4)	Mission Controller
13. Funds Obligation	Prepare Pre-Obligation checklist	Mission or Bureau Lead
14. Funds Obligation	<u>Signing of cleared legal agreement is obligating document (Do not sign any guarantee agreement or an additional subsidy cost modification amendment until subsidy cost has been committed-processed in Phoenix). The Agreement must be stamped with a Fund Cite and/or the Controller or designated responsible person has signed confirming that the subsidy cost has been committed in Phoenix). This must be done no later than 11:59pm local time on September 30.</u> Sign at least two copies of the legal agreement. Scan and submit to E3/DC.	Mission Director and Bank Officer
15. Funds Obligation	Obligation of funds is posted in Phoenix (if obligated within last week of fiscal year, see M/ICFO guidance)	Mission Controller

DCA YEAR-END GUARANTEE AGREEMENT SIGNATURE DEADLINE NOTICE:

- Fiscal Year End is 11:59 pm on September 30 in the time zone where the USAID executing officer is obligating the funds.
- In order for guarantee agreement to be properly obligated both USAID officer and the Guaranteed Party (GP) *must* sign prior to 11:59 pm local time on September 30.
- The GP should sign first and only insert the date signed under the GP's signature block in the guarantee agreement. Sign at least two physical copies of the legal agreement.
- The USAID officer must sign and date the agreement prior to 11:59 pm local time on September 30.
- If you have a situation where the Mission Director will not be available after the GP signs prior to the above date, then please contact your RLO, GC or E3/DC to discuss alternatives.
- Signing of cleared guarantee agreement constitutes the obligation of the DCA project.
- **Do not sign any guarantee agreement until a valid commitment of funds for the subsidy cost has been recorded in Phoenix.**
- **The guarantee agreement must be stamped with a fund cite**
- **The obligation (executed by September 30 as described above) must be recorded in Phoenix.** Failure to do so will constitute a **funds control violation.**
- Scan the signed legal agreement. Ask the Mission Controller to take a screen shot of the Phoenix commitment and obligation (or print a Phoenix obligation report). Send all of these documents to E3/DC Project Lead on or before September 30.

- For more complete information as to the deadlines for posting of commitments and obligations in Phoenix, please see the Phoenix Year End Close guidance.